

Thomas Holt

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SEA STAR LINE, LLC, A LIMITED :
LIABILITY COMPANY, :
Plaintiff/ : Civil Action No.
Counterclaim Defendant, : 05-CV-245-JJF (LPS)
vs. :
EMERALD EQUIPMENT LEASING, :
INC., a corporation, :
Defendant/ :
Counterclaim Plaintiff. :
-

Deposition of THOMAS HOLT, SR.
taken at Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place, 50 South 16th Street, 22nd Floor
Philadelphia, Pennsylvania 19102
Tuesday, February 12 2008
9:45 a.m.

Gail L. Inghram Verbano, CSR, RMR, CLR
302.449.0529

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2 (Pages 2 to 5)

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A P P E A R A N C E S		
On behalf of Sea Star Line:		
TIMOTHY J. ARMSTRONG, ESQUIRE amesq@aol.com ARMSTRONG & MEJER, P.A. 2222 Ponce de Leon Boulevard Penthouse Suite Miami, Florida 33134 305.444.3355		10 Spreadsheets of invoices 112 11 Spreadsheets of invoices with attached email from setox@aol to Mr. Rooks dated 10-26-07 113
(The original exhibits were returned to Ms. Kathleen Miller; digital copies were provided to all counsel.)		
On behalf of Emerald Equipment Leasing, Inc.:		
ALAN I. MOLDOFF, ESQUIRE amoldoff@eckertseamans.com ECKERT SEAMANS CHERIN & MELLOTT, LLC Two Liberty Place 50 South 16th Street, 22nd Floor Philadelphia, Pennsylvania 19102 215.851.8450		
ALSO PRESENT:		
Andrew Rooks		
Page 3		Page 5
C O N T E N T S		
WITNESS: THOMAS HOLT, SR.	PAGE	1 THOMAS HOLT, SR., having first been duly
Mr. Armstrong	5	2 sworn according to law, was examined and testified as
follows:		3
E X H I B I T S		4
E.E.L.	DESCRIPTION	5 EXAMINATION
	PAGE	6 BY MR. ARMSTRONG:
1 Renotice of deposition	16	7 Q Please state your full name.
2 Fax from Andy Rooks to Art Davis dated 6-4-02	67	8 A Thomas J. Holt, Sr.
3 Email from Ms. Robins to Mr. Rooks dated 6-26-02	69	9 Q Mr. Holt, what is your business address?
4 Greenwich Terminals invoice dated 3-6-03	71	10 A My business address? Well, I guess for the want of a better one, we'll use my home address.
5 Photocopies of two checks from Greenwich Terminals to Martin McDonald	72	11 Q And your home address is the same as it
6 Letter from Mr. Moldoff to Mr. Armstrong dated 6-29-04	91	12 was when you were deposed before?
7 Email from Mr. Davis to Mr. Rooks dated 8-19-04	93	13 A Yes, sir.
8 Order approving the stipulation between Sea Star Line and the debtor regarding disposition of certain equipment	98	14 Q Are you employed?
9 Maritime liens asserted by E. T. Heinsen C Por A and Naves Y Terminales, S.A.	106	15 A No, sir.
		16 Q Do you hold positions with any companies?
		17 A Emerald Leasing.
		18 Q What is your position with Emerald
		19 Leasing?
		20 A President.
		21 Q Have you remained president since you
		22 bought out the other people in 2000 or so?
		23 A Yes, sir.
		24

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<p>1 Q Are there any employees of Emerald 2 Equipment Leasing? 3 A No, sir. 4 Q Have there been any employees of Emerald 5 Equipment Leasing during the past three years? 6 A Using the term "employees," I have no 7 employees. I do hire people from time to time to do 8 work for me. 9 Q Those -- would you call those people 10 independent contractors? 11 A For want of a better word, yes. 12 Q Or contractors? 13 A Yes. 14 Q All right. Whom have you hired in the 15 past three years to do work for Emerald Equipment 16 Leasing? 17 A Immediately, Lorraine Robins comes to 18 mind. Art Davis; John Evans; his wife, Mrs. Evans. 19 I can't remember the name of the gentleman down in 20 Puerto Rico, but that was three years ago, I guess -- 21 two to three years ago. And from time to time 22 various people do help me. 23 Q When did you hire Lorraine Robins? 24 A When did I hire her?</p>	<p>1 A No, sir. 2 Q What work did Ms. Robins do with Emerald 3 Equipment Leasing or for Emerald Equipment Leasing? 4 A Well, the same as the other people: They 5 attempted to find out where all the equipment was, 6 attempted to offer for sale to the marketplace; 7 continued to put together the correlation of 8 information that we were receiving from Sea Star, 9 MBC Bank and other entities to determine the proper 10 value of equipment to be sold; the proper value of 11 the rents that Sea Star was reporting under their 12 self-billing report. 13 Q During what period of time was Arthur 14 Davis a contractor for Emerald Equipment Leasing? 15 A The same as Lorraine. 16 Q Does he still do work for Emerald? 17 A Indirectly, yes. 18 Q When you say "indirectly," what work does 19 he do? 20 A Well, when he's available, he attempts to 21 find out if there's any equipment that has not been 22 turned back; if possible, to sell equipment that was 23 never turned back if it's found on the world market. 24 He talks to me about various other entities that he</p>
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<p>1 Q To do work for Emerald Equipment Leasing 2 or retain her to do work for Emerald Equipment 3 Leasing. 4 MR. MOLDOFF: Object to the form of the 5 question. 6 THE WITNESS: Lorraine, in her career, 7 has worked for me for several years, 45 or more. The 8 immediate period of the time frame would be about '02 9 to maybe through to '03, '04; and that's when Emerald 10 had her working for them. 11 BY MR. ARMSTRONG: 12 Q Does Lorraine Robins still do work for 13 Emerald Equipment Leasing? 14 A She does for her company, Storage 15 Transfer. 16 Q While she was doing work for Emerald 17 Equipment Leasing, was she paid? 18 A No. 19 Q Was there an agreement as to payment made 20 with her? 21 A There is an agreement to pay her and 22 other people at the hopefully successful conclusion 23 of this litigation. 24 Q Is that agreement in writing?</p>	<p>1 may think there's opportunities of employment for. 2 Q You mentioned that Ms. Robins and 3 Mr. Davis gathered information from Sea Star, 4 MBC Bank and other entities. 5 Q Do you know what those other entities are 6 or were? 7 A Trucking companies, railroad entities 8 that would have possession of the equipment that Sea 9 Star abandoned throughout the trade lanes in the 10 United States. 11 Q That Sea Star abandoned? 12 A Yes, sir. 13 Q When did you learn that Sea Star had 14 abandoned equipment? 15 A When they never returned the equipment 16 that was under lease to them. 17 Q When did you learn that? 18 A When did I learn that? 19 Q Yes. 20 A Time frame? 21 Q Yes, sir. 22 A Let's see. This is '08. I would tell 23 you right up until today. Predominantly in '03 and 24 '04, but certainly up to today. As you're aware,</p>

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<p>1 there's several hundred pieces of equipment missing 2 that you never returned.</p> <p>3 Q I take it that you're using the royal 4 "you"?</p> <p>5 A As always, I look at counsel as Sea Star.</p> <p>6 Q Thank you.</p> <p>7 What arrangement was there or is there to 8 compensate Arthur Davis?</p> <p>9 A The same answer as Lorraine.</p> <p>10 Q What work has John Evans done as a 11 contractor?</p> <p>12 A He, as an attorney, assisted Lorraine and 13 Arthur in the correlation and discovery of documents 14 from Sea Star and other entities and advice to me.</p> <p>15 Q During what period of time was John Evans 16 a contractor for Emerald Equipment?</p> <p>17 A For Emerald Equipment? Probably sometime 18 in '06 that ended.</p> <p>19 Q Do you recall when it started?</p> <p>20 A It would have started probably about '02, 21 '03, best guesstimate.</p> <p>22 Q What agreement for compensation does 23 Emerald or has Emerald had with John Evans?</p> <p>24 A Emerald was paying Mr. Evans; and it got</p>	<p>1 A I'm sorry. 2 Q No, I'm sorry. I cut you off. 3 A Go ahead. 4 Q Was there an arrangement to compensate 5 her?</p> <p>6 A Yes, sir. 7 Q And what was that arrangement? 8 A Again, it was paid on a weekly basis, and 9 I feel it was -- the rate was per diem. It might 10 have been by the hour, but -- it was what it was.</p> <p>11 Q Was Emerald Equipment Leasing making the 12 payments to Mr. Evans and Mrs. Evans?</p> <p>13 A Was Emerald Equipment Leasing making 14 payments to them?</p> <p>15 Q Making the payments.</p> <p>16 A Are you talking about payroll? What kind 17 of --</p> <p>18 Q Talking about writing checks, that sort 19 of thing.</p> <p>20 A Payments for services they rendered?</p> <p>21 Q Yes.</p> <p>22 A Emerald was paying them, yes.</p> <p>23 Q Do you recall the names of the other 24 people?</p>
Page 11	Page 13
<p>1 to a point in time where it couldn't pay him anymore 2 so we parted company. Ran out of money.</p> <p>3 Q How was Mr. Evans being paid? Was it by 4 the hour or a salary?</p> <p>5 A I think it was more weekly, if I 6 remember.</p> <p>7 Q Was it a salary arrangement or an hourly 8 arrangement?</p> <p>9 A No, I believe it was more weekly, not 10 hourly. Might have been per diem.</p> <p>11 Q Was there a written contract?</p> <p>12 A No, sir.</p> <p>13 Q And what work did Mrs. Evans do for 14 Emerald?</p> <p>15 A Assisted in the correlation of all the 16 documents.</p> <p>17 Q Over what period of time did she do that 18 work?</p> <p>19 A Best guess for Emerald would have been 20 probably '05.</p> <p>21 Q During the year '05? No work prior, no 22 work afterwards?</p> <p>23 A I don't think so.</p> <p>24 Q Was there an arrangement --</p>	<p>1 A No, not off the top of my head. 2 Q You recall Marty McDonald? 3 A Okay. Thank you for reminding me. But 4 Marty was more in '03 and '04, I think. But thank 5 you for reminding me.</p> <p>6 Q You're welcome. 7 Was he working for Emerald at that time? 8 A Yes. 9 Q Was he being paid by Emerald? 10 A Yes, sir. 11 Q What were his responsibilities? 12 A His responsibilities was to assist Arthur 13 and Lorraine in trying to find Emerald's equipment, 14 more towards Jacksonville and Puerto Rico; and trying 15 to recover the equipment; and also to assist in 16 whatever paperwork was required.</p> <p>17 Q Does Marty McDonald still do any work for 18 Emerald?</p> <p>19 A No, sir. 20 Q Do you recall a Francisco or Frankie 21 Gonzalez?</p> <p>22 A I remember the name Frankie. He was in 23 Puerto Rico -- or was he in Jacksonville?</p> <p>24 Q He was in Puerto Rico.</p>

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<p>1 A Okay.</p> <p>2 Q Was he working for Emerald?</p> <p>3 A He was working for Emerald.</p> <p>4 Q Over what period of time?</p> <p>5 A Probably the same time frame. From -- I 6 want to say '02, but I think it was probably later 7 part of that, maybe '03 and '04. Maybe '03, because 8 Storage Transfer came into existence back in those 9 days.</p> <p>10 Q What were his responsibilities?</p> <p>11 A To find the equipment that was scattered 12 all over.</p> <p>13 Q How was he paid?</p> <p>14 A He was paid by Emerald.</p> <p>15 Q By check?</p> <p>16 A Jeez. I don't know if it was check, 17 cash, wire transfer. You're going to '03? '02? Six 18 years ago. He was paid. He wasn't doing it for 19 free.</p> <p>20 Q Do you recall the name Joe Maqueda?</p> <p>21 A I recall the name. My mind says he was 22 some sort of salesperson or in the leasing business.</p> <p>23 Q Was he working for Emerald?</p> <p>24 A He would probably have been working</p>	<p>1 Lorraine; and it could have been wire transfers, as I 2 said earlier.</p> <p>3 Q Would Lorraine have been responsible for 4 arranging the wire transfers?</p> <p>5 A Yes.</p> <p>6 MR. ARMSTRONG: Let me show you a copy of 7 a renote of taking deposition that I'll ask the 8 court reporter to mark as Exhibit 1 for 9 identification.</p> <p>10 Counsel, before we start, do you want to 11 mark this as Emerald Exhibit 1 or -- do you have any 12 preference?</p> <p>13 MR. MOLDOFF: That's fine. I'm sure we 14 probably used that designation before. (Discussion off the record.) (E.E.L. Exhibit 1 was marked for identification.)</p> <p>15 BY MR. ARMSTRONG:</p> <p>16 Q Have you seen that document before?</p> <p>17 A This document I saw today. I had the 18 other document that you were going to do back in 19 January. I would think they're one and the same. I 20 don't know. You would know.</p> <p>21 Q I will say to you that Exhibit A should</p>
<p>1 through Art Davis or Lorraine for Emerald selling 2 equipment. That's how I would seem to remember. I 3 don't know if he was an actual employee.</p> <p>4 Q Do you know whether he was paid by 5 Emerald?</p> <p>6 A Yes; if he worked for Emerald, he 7 certainly would have been paid. If he was a 8 salesperson for Emerald, he would have been paid a 9 commission, I would assume. Or if he just bought 10 equipment from Emerald, that was that story.</p> <p>11 Q Who was responsible for actually making 12 the payments to these contractors on behalf of 13 Emerald?</p> <p>14 A Myself in a great degree, and Lorraine or 15 Art.</p> <p>16 Q Did you actually write Emerald checks?</p> <p>17 A I don't think I ever wrote a check in my 18 life. I always had my people write the checks.</p> <p>19 Q Well, who was or were the Emerald people 20 that wrote the checks to these contractors, if there 21 were checks?</p> <p>22 A That time frame?</p> <p>23 Q Yes, sir.</p> <p>24 A If it was checks, it would have been</p>	<p>1 be the same on both. The original in January was a 2 notice; this is a renote. But the Exhibit A's 3 attached should be the same.</p> <p>4 So look at Exhibit A. Have you seen that 5 before?</p> <p>6 A This document here that says "Exhibit A"?</p> <p>7 Q Yes.</p> <p>8 A Yes. I seen it from your prior 9 deposition notice.</p> <p>10 Q And have you reviewed it?</p> <p>11 A I read it.</p> <p>12 Q Are you here to testify as the corporate 13 representative of Emerald Equipment Leasing, Inc., as 14 to all items in Exhibit A?</p> <p>15 A To the best of my ability.</p> <p>16 Q Are there any other individuals who will 17 testify as corporate representatives of Emerald as to 18 any of the items specified on Exhibit A?</p> <p>19 A I am the only corporate representative of 20 Emerald.</p> <p>21 MR. MOLDOFF: Well, that's actually -- 22 you mean that's actually the official -- 23 THE WITNESS: President. 24 MR. MOLDOFF: -- officer?</p>

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<p>1 THE WITNESS: Yes.</p> <p>2 MR. MOLDOFF: Of the company.</p> <p>3 THE WITNESS: That's how I took his</p> <p>4 question.</p> <p>5 MR. MOLDOFF: He's here to answer the</p> <p>6 questions -- I believe that he can testify to these</p> <p>7 various areas. And as he said, he'll do the best he</p> <p>8 can.</p> <p>9 BY MR. ARMSTRONG:</p> <p>10 Q Did you bring any documents with you?</p> <p>11 A Documents of -- like this?</p> <p>12 Q Any papers. The renote states, "The</p> <p>13 said deponent is to bring the following: All</p> <p>14 documents responsive to Sea Star Line, LLC's Request</p> <p>15 for Production of Documents dated December 19th,</p> <p>16 2006."</p> <p>17 MR. MOLDOFF: I could just -- I discussed</p> <p>18 that with Mr. Holt briefly today.</p> <p>19 The prior notice that we had did not have</p> <p>20 that same designation. I just noticed it myself just</p> <p>21 recently and just mentioned it to Mr. Holt.</p> <p>22 Obviously, I think as you know,</p> <p>23 Mr. Armstrong, all of those documents, which are</p> <p>24 quite voluminous, we have supplied and Sea Star has.</p>	<p>1 Paragraph 12 of the Amended Counterclaim?</p> <p>2 MR. MOLDOFF: Object to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: Paragraph 1?</p> <p>5 BY MR. ARMSTRONG:</p> <p>6 Q No. Look at Paragraph -- look at</p> <p>7 Paragraph 2 of the Exhibit A.</p> <p>8 A Didn't you just say Paragraph 12?</p> <p>9 Q I said Paragraph 12 of the Amended</p> <p>10 Counterclaim.</p> <p>11 A What would you like me to look at,</p> <p>12 Paragraph 2 of this document, Exhibit A?</p> <p>13 Q Yes.</p> <p>14 A Thank you.</p> <p>15 Q In Paragraph 12 of the Amended</p> <p>16 Counterclaim, it is stated, "At the inception of the</p> <p>17 lease between Emerald and Sea Star, the Emerald</p> <p>18 equipment was not in Emerald's possession. Instead,</p> <p>19 all of the equipment was, inter alia, in terminals in</p> <p>20 the possession of shippers at inland depots or on</p> <p>21 board NPR vessels purchased by Sea Star."</p> <p>22 How did Emerald determine the specific</p> <p>23 locations of this equipment at the inception of the</p> <p>24 lease between Emerald and Sea Star?</p>
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<p>1 So we could not possibly produce, and I don't think</p> <p>2 there was any requirement for us to re-produce, all</p> <p>3 the documents that we've already produced. So we</p> <p>4 don't have any documents here.</p> <p>5 MR. ARMSTRONG: So that we're clear, your</p> <p>6 position is that you have produced all of the</p> <p>7 documents and that there will be no additional</p> <p>8 documents produced today?</p> <p>9 MR. MOLDOFF: I produced all the</p> <p>10 documents. Without further review, do I know that</p> <p>11 there are no possible other documents? I can't say</p> <p>12 that specifically. If there are, we will produce</p> <p>13 them.</p> <p>14 But the best of our knowledge right now,</p> <p>15 we believe that we have produced whatever we had that</p> <p>16 was responsive to the Request for Production of</p> <p>17 Documents. Also, given our objections and other</p> <p>18 responses that we've filed in connection with the</p> <p>19 request.</p> <p>20 BY MR. ARMSTRONG:</p> <p>21 Q Mr. Holt, how did Emerald determine the</p> <p>22 specific locations of the Emerald equipment involved</p> <p>23 in Emerald's claims at the inception of the lease</p> <p>24 between Emerald and Sea Star, as alleged in</p>	<p>1 MR. MOLDOFF: Object to the form of the</p> <p>2 question.</p> <p>3 THE WITNESS: Emerald determined it</p> <p>4 through the inventory controls of NPR, who had leased</p> <p>5 all of Emerald's equipment for years; and the</p> <p>6 continual inventory control systems that were coming</p> <p>7 from NPR, Inc., in conjunction with Sea Star.</p> <p>8 Sea Star took over the inventory controls</p> <p>9 of NPR under NPR's 3900 computer, and they maintained</p> <p>10 that inventory for a period of time.</p> <p>11 BY MR. ARMSTRONG:</p> <p>12 Q For what period of time did Sea Star</p> <p>13 maintain that inventory?</p> <p>14 A Well, this document was in Madison,</p> <p>15 New Jersey. And I want to tell you it was, to my</p> <p>16 best guesstimate -- because I wasn't involved, in</p> <p>17 fact, at that point in time, as you know -- it could</p> <p>18 have been for a period of three months. Certainly</p> <p>19 not less than one month. Somewhere in that time</p> <p>20 frame.</p> <p>21 Q Were you ever involved in the inventory</p> <p>22 controls of NPR?</p> <p>23 A Yes.</p> <p>24 Q And over what period of time were you</p>

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1 involved in the inventory controls of NPR?	1 determination that the inventories of NPR -- that is,
2 A Well, as its chief executive officer and	2 the equipment inventories -- were correct?
3 owner of the company, the period of time that I owned	3 A That day? No. Did we know them to be
4 it.	4 correct? As best as NPR's ability and Emerald's, to
5 Q What period of time was that?	5 know where the equipment was, the condition of the
6 A I bought the company in '07; and it was	6 equipment and who was using it.
7 liquidated -- at least I was let out in '02.	7 The asset sale of NPR did not include
8 Q Did you buy the company in '97?	8 Emerald equipment.
9 A Yes, sir.	9 Q Would it be fair to say that insofar as
10 Q And you owned the company until the	10 Emerald was concerned, the NPR inventories as to
11 company -- that is, NPR -- was liquidated in 2002?	11 types and locations of equipment were correct in --
12 A I owned the company until a trustee	12 say as of April 25th, 2002?
13 replaced me in '02, March of '02. The company was in	13 A We knew them to be correct, because they
14 bankruptcy.	14 were doing, prior to April 25th -- or when was the
15 You will find voluminous testimony on	15 sale? April 26th?
16 this that I gave you two years ago.	16 Q The order was entered April 26th; the
17 Q So I'm moving on.	17 sale closed on April 27th.
18 But my question in regard to the	18 A Well, what I'm trying to tell you is that
19 inventory controls is, what was your specific	19 we knew them to be correct, because it was doing the
20 involvement during that period of time?	20 mission statement of NPR and handling all the cargo
21 A Did I run the computer? No. Did I know	21 requirements of NPR, and we had reports from all the
22 that the inventories were taken on a daily basis?	22 terminals on what equipment was available and not
23 Yes. Submitted daily to all terminals of NPR,	23 available, as NPR.
24 including the home office, where I was.	24 So Emerald relied upon that, because it
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1 Q And did you ever review those	1 was a gross lease, not a per-diem lease, as we
2 inventories?	2 talked.
3 A Yes.	3 Q All right. Now, when you say "all the
4 Q Who, on behalf of Emerald, reviewed the	4 terminals," were there terminals other than NPR
5 inventories?	5 terminals involved in that inventory?
6 MR. MOLDOFF: Object to the form of the	6 A Well, we had equipment that you took
7 question.	7 possession of in railroad yards, intermodal yards and
8 THE WITNESS: Well, on behalf of	8 trucking company yards. We had equipment under load.
9 Emerald -- wearing the same hat as the owner of	9 We had equipment waiting to be loaded throughout the
10 Emerald in those days -- I was not as interested in	10 country. We maintained depots in all those places.
11 the daily inventories of Emerald because Emerald did	11 That was all there, covered under the NPR inventory
12 not truly have one. It was NPR's inventory for	12 controls.
13 Emerald, because it was under a total lease. It was	13 Q The inventory controls covered equipment
14 not what you would call a specific unit per-diem	14 terminals, inland depots, yards in the continental
15 lease that was entered into with Sea Star and	15 United States?
16 Emerald.	16 A To be very specific what terminals, I
17 If that can help you, fine. That's the	17 couldn't tell you. Did it show where the equipment
18 way I saw it.	18 was? Yes.
19 BY MR. ARMSTRONG:	19 Q It showed equipment in Puerto Rico;
20 Q In April 2002, there were NPR inventories	20 correct?
21 continuing; correct?	21 A Yes.
22 A That's right, on behalf of Emerald.	22 Q Showed equipment in the Dominican
23 Q And before the Court authorized the asset	23 Republic?
24 purchase by Sea Star from NPR, did Emerald make any	24 A Yes.

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1 **Q** Was the terminal in Puerto Rico reporting
 2 as to locations of equipment to NPR or to someone
 3 else on behalf of NPR?

4 MR. MOLDOFF: Object to the form of the
 5 question.

6 THE WITNESS: The inventory controls
 7 would have had to come, plus or minus, every day from
 8 the various terminals back to the mainframe computer
 9 in Madison so that the marketing department would
 10 know what equipment was where, for the availability
 11 for -- first, to deliver cargo to the consignees; and
 12 second, to have equipment available for shippers
 13 throughout the territory you speak of.

14 BY MR. ARMSTRONG:

15 **Q** What was the procedure in the Dominican
 16 Republic?

17 MR. MOLDOFF: Object to the form of the
 18 question.

19 BY MR. ARMSTRONG:

20 **Q** With respect to reporting.

21 A The best I could tell you is that, if I
 22 can recall in those days, the Dominican Republic was
 23 reporting directly to the mainframe in Madison.

24 Now, did it go through Puerto Rico to get

1 you that I was the person authorizing Emerald to
 2 enter into these self-billing reports between MBC,
 3 Sea Star and Emerald.

4 Now, to answer your question: Yes.

5 **Q** When did you become aware that Sea Star
 6 self-billing reports were inaccurate?

7 A Oh, it had to be the latter part of '02.

8 **Q** How did you become aware that Sea Star's
 9 billing reports were inaccurate?

10 A It was an accumulation of information
 11 that came into Emerald's office from your
 12 self-billing reports and from other marine terminals,
 13 truckers, railroad yards, et cetera. And primarily
 14 from your own documents, as we started to see a
 15 pattern of equipment not being accounted for.

16 **Q** When did Emerald start to see the pattern
 17 of equipment not being accounted for?

18 A I would tell you that once we started
 19 receiving your documents -- and I'm going to put a
 20 time frame on it -- could be wrong -- sometime in the
 21 fall of '02, maybe September/October.

22 **Q** How did you personally learn that the Sea
 23 Star self-billing reports were inaccurate?

24 A I reviewed them after they were corrected

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1 there? It could have. But certainly they knew what
 2 equipment was where.

3 **Q** Did Emerald ever audit the equipment
 4 inventories reported by NPR?

5 A Well, it was -- in the possession of NPR?

6 **Q** Yes, sir.

7 A No. As I told you, it was a grossed-up
 8 lease.

9 **Q** What is a grossed-up lease?

10 A It's a lease that NPR and Emerald entered
 11 into where the total fleet of Emerald would be leased
 12 by NPR for a period of time.

13 **Q** Did you have any communications with Sea
 14 Star representatives concerning self-billing reports?

15 A No. We talked in generalities to that.
 16 That was concluded between parties other than I.

17 **Q** And who were those parties?

18 A Well, my best guess right now -- and I
 19 can't tell you definitely -- was the Sea Star people,
 20 hopefully, because they prepared them: Art Davis,
 21 Lorraine, MBC Bank.

22 **Q** Did you ever become aware that
 23 self-billing reports by Sea Star were inaccurate?

24 A To answer that question, I should tell

1 by Lorraine and Arthur.

2 It was nothing that comes as any surprise
 3 to the Sea Star people. We were complaining bitterly
 4 about it.

5 **Q** And when did Emerald start complaining
 6 bitterly about the self-billing reports?

7 A Once we started to see how you were
 8 underpaying.

9 **Q** When was that? Was that in --

10 A That was -- it could have been --

11 **Q** Summer? fall?

12 A It could have -- well, I'm telling you
 13 when I got involved.

14 **Q** Okay.

15 A It could have been sometime in August,
 16 July, June of '02, right from the get-go.

17 **Q** Did you retain Lorraine Robins as a
 18 contractor before you determined that the -- or
 19 learned that the Sea Star self-billing reports were
 20 inaccurate?

21 A Before or after? I retained her from
 22 when Emerald needed someone to cover their office
 23 activities. I retained her and Arthur. And it would
 24 have been probably immediately -- I don't know -- in

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9 (Pages 30 to 33)

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1 July or August of that year. 2 Q July or August of 2002? 3 A '02. '02, yeah. 4 Now, that's six years ago, so -- five and 5 a half years ago, so I believe that's the time frame. 6 Q When you learned that the Sea Star 7 self-billing reports were inaccurate, what action did 8 you take? 9 A Well, I instructed them to communicate, 10 in every instance, back to the Sea Star people. To 11 correct the invoices, send them back to the Sea Star 12 people. I started talking to people at Sea Star -- 13 specifically, Bob McGee. 14 Q Do you know whether Mr. Davis and 15 Ms. Robins followed your instructions? 16 A Only the facts that bring us here today, 17 yes. Yes, they did follow them. 18 Q When did you talk to Bob McGee about the 19 self-billing reports? 20 A You mean the understanding of them? 21 Q Yes. 22 MR. MOLDOFF: If you recall. Again, 23 don't speculate. 24 THE WITNESS: I don't have ability to	1 A In the instance of equipment under load 2 somewhere and not shown on the self-billing report. 3 That really became very evident in '03. 4 The instance of equipment being reported, 5 but underreported, started, as I said to you, to show 6 up, in our minds, through the end of '02. 7 And finally, to finish your -- you go 8 next. I'll wait for you. 9 Q No, go ahead. 10 A No. 11 Q Go with the "finally." 12 A No, please, you first. 13 MR. MOLDOFF: Ask another question, 14 please. 15 THE WITNESS: You invited me. I'll wait 16 for you. 17 BY MR. ARMSTRONG: 18 Q Well, thank you. 19 As you were saying, "and finally." 20 A That would not be an answer to a question 21 that you might give me. Please give me a question, 22 and I'll answer it. 23 Q Yes, sir. I'll be happy to. 24 When you say you weren't paying the per
1 tell you what day I called him on the phone. But it 2 probably was closer to September/October. 3 BY MR. ARMSTRONG: 4 Q 2002? 5 A Yes. Had meetings with the man in 6 that -- towards the end of the year. 7 Q Was the problem ever resolved? 8 A No, sir. 9 Q Did you have any communications with 10 anyone from MBC Bank regarding the self-billing 11 reports or MBC leasing? 12 A Well, back in those days, my contact with 13 the bank was Scott Krieger. And I just said to him, 14 As far as I'm concerned, you weren't paying the right 15 rates -- not the rates, the right per diems. The 16 rates were always proper under the schedule of rates 17 in the Sea Star/Emerald lease, but it was the amount 18 of per diems. 19 In many cases, it was a mistake by your 20 billing people. Many cases you could see there was a 21 pattern over the time frame of several months that 22 equipment was not being reported. 23 Q In what types of cases, if you can say, 24 was the pattern evident?	1 diem, you were referring to Sea Star not paying the 2 per diem; correct? Not MBC? 3 A MBC was the people that had the loan on 4 the equipment. It was the documents that Sea Star 5 was providing Emerald and MBC, known as your 6 self-billing reports. 7 Q And those self-billing reports dealt with 8 per-diem payments; correct? 9 A They dealt with two things: They dealt 10 with per-diem payments, the rate; and they dealt with 11 the amount of days; and a third thing would have been 12 possession. That would have shown possession. 13 Q You were aware, were you not, that Sea 14 Star was storing equipment? 15 A For whose benefit? Sea Star's or 16 somebody else's? 17 Q For MBC. 18 A That they were physically storing 19 equipment for MBC? 20 Q Yes. 21 A Under the Emerald lease? 22 Q Under the -- 23 A Or is that a separate transaction between 24 Sea Star and MBC?

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10 (Pages 34 to 37)

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1 **Q** Well, under the Court's order on the
2 asset sale for --

3 **A** No, I'm sorry. The -- the negotiation
4 between MBC and Sea Star I was not privy to.

5 **MR. MOLDOFF:** I -- just object to the
6 question. I'm not sure under what area of testimony
7 that you have on Exhibit A. Are we -- are you
8 referring to -- when you're talking about storage, I
9 don't see that as any of the particular areas that
10 you designated.

11 **MR. ARMSTRONG:** Well, I'm referring to
12 this.

13 **BY MR. ARMSTRONG:**

14 **Q** What do you mean when you say
15 "possession"?

16 **A** Possession of what? Equipment?

17 **Q** Equipment; yes, sir.

18 **A** In whose possession?

19 **Q** In Sea Star's possession.

20 **A** Means you had Emerald's equipment under
21 lease between Sea Star and Emerald. I never knew
22 your agreement with MBC. I wasn't privy to it.

23 **Q** So --

24 **A** I only know, by third party, that you

1 **A** I was never aware that you were an agent
2 for MBC to sell my equipment.

3 **Q** Did you ever become aware that equipment
4 in the possession of Sea Star was in storage for sale
5 by MBC or Emerald, not by Sea Star?

6 **A** I answered that question. Your dealings
7 with MBC were directly between the two of you. We
8 never authorized MBC to place our equipment in
9 storage anywhere. We didn't have to. Our equipment
10 was actively in your possession or in our possession
11 being sold.

12 **Q** When it was in your possession, was it
13 ever located at a Sea Star terminal?

14 **A** It was equipment that Emerald had in a
15 facility -- which was your marine terminal in
16 Puerto Rico -- totally isolated, totally there to be
17 sold for Emerald.

18 **Q** Did Emerald ever bill Sea Star for any of
19 that equipment?

20 **A** Yes, sir.

21 **Q** And what was the reason Emerald billed
22 Sea Star for that equipment?

23 **A** Because you took possession of it and
24 moved cargo on it.

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1 bought some equipment from MBC; and my loan was
2 credited with that amount of money.

3 **Q** In your analysis of the self-billing
4 reports --

5 **A** Yes, sir.

6 **Q** -- did you differentiate between Sea
7 Star's possession of the equipment for use and Sea
8 Star's possession of the equipment for storage?

9 **A** We differentiated -- if that is the right
10 word, we -- better to say you were invoiced where
11 your invoices were corrected for only the equipment
12 that was in your possession.

13 Now, if you wanted to store it -- like
14 many times in the invoices you would leave equipment
15 at a depot in Seattle, Washington, or Cincinnati or
16 Timbuktu. That would be up to you. We were not in
17 the storage business; we were in the selling of
18 equipment.

19 Your possession was the only thing we
20 were interested in, and we got that information from
21 your self-billing reports.

22 **Q** Did you ever become aware that equipment
23 in Sea Star's possession was in storage for sale by
24 MBC and Emerald?

1 **Q** If it was in a Sea Star terminal in
2 Emerald's possession for sale --

3 **A** A storage lot.

4 **Q** -- did Emerald bill Sea Star for any of
5 that equipment?

6 **MR. MOLDOFF:** Object to the form of the
7 question.

8 **THE WITNESS:** When you took possession of
9 it and used it for Sea Star's cargo.

10 **BY MR. ARMSTRONG:**

11 **Q** Did Emerald ever bill Sea Star for
12 equipment while it was in Emerald's possession?

13 **A** Would you say that slow.

14 **Q** I thought I spoke slowly.

15 **A** No, because --

16 **Q** Did Emerald ever bill Sea Star for
17 equipment while it was in Emerald's possession?

18 **A** Not to my knowledge.

19 **MR. MOLDOFF:** Object to the form of the
20 question, but you can answer.

21 **THE WITNESS:** Thank you.

22 **BY MR. ARMSTRONG:**

23 **Q** Did Emerald have possession of any
24 equipment in inland depots that Sea Star used?

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11 (Pages 38 to 41)

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1 A No, sir. 2 Q Did Emerald retrieve equipment that was 3 located in Emerald -- I'm sorry -- in Emerald depots 4 that became Sea Star depots after the asset purchase? 5 A I will tell you -- 6 MR. MOLDOFF: Object to the form of the 7 question. 8 THE WITNESS: Okay. I guess that's 9 somewhere in here. 10 I would tell you that Emerald retrieved 11 equipment in depots that Sea Star utilized for the 12 delivery of their cargoes and never returned to 13 Emerald. And Emerald subsequently was notified by 14 truckers, railroads, "Come and get your equipment; it 15 was abandoned by Sea Star." 16 BY MR. ARMSTRONG: 17 Q Do you recall the names of any truckers 18 that said, "Come and get your equipment; it was 19 abandoned by Sea Star"?" 20 A There's one in New York. I don't have 21 the name on the top of my head. 22 And there was two places in railroad 23 yards. One in Chicago -- and this is multiple times. 24 One in Chicago and one in -- I want to say Ohio, but	1 A August. 2 Q -- August 2002? 3 A You might as well say all of '02, to the 4 best of my recollection. 5 Q All right. Do you have any knowledge 6 that Sea Star intended to defraud Emerald in 7 connection with the self-billing reports? 8 A Personal knowledge would go this way: 9 The self-billing reports are self-explanatory. But 10 as I started to see that the underreporting 11 continued, I just felt that there was a pattern here. 12 You have to go back a little bit, if I 13 may, I guess. 14 The whole position of entering into an 15 agreement with Sea Star and Emerald was one based on 16 a relationship that was a couple years old of the 17 personalities and your owners of Sea Star/Salchuk. 18 There was, built over that time frame, a 19 trust. I mean, no sane person would turn over 20 millions of dollars to somebody without certainly 21 having several millions of dollars of letters of 22 credit posted. We just took it on trust that this 23 agreement that was entered into would be for the best 24 of both parties, Sea Star and Emerald. And it's
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1 I'm sorry, I don't have that at my fingertips. It is 2 all covered under the invoices that we sent you. 3 Q Do you recall the name of the railroads? 4 Or names of the railroads? 5 A CSX jumps to mind. I don't think there 6 was any Norfolk Southern. But I do think it was CSX. 7 Q Did you have any communications with Sea 8 Star representatives regarding the undertaking of the 9 obligation to report to Emerald its usage of the 10 Emerald equipment? 11 A I personally? 12 Q Yes, sir. 13 A I hate to ask you: Would you repeat that 14 back, please. 15 Or you repeat it, because I'm confused 16 with that question. 17 (Record read.) 18 THE WITNESS: I would tell you early on I 19 did. Who I said it to, I don't remember. I probably 20 even wrote letters, but I don't remember. But -- the 21 answer is what I just said. 22 BY MR. ARMSTRONG: 23 Q Is the early-on time frame, the June, 24 July --	1 self-explanatory throughout the term and how it came 2 about. 3 The intent was, eventually you would buy 4 equipment; and what you wouldn't buy, you would turn 5 back. Not everybody is perfect in covering the dots 6 and crossing the Ts, but it was built on trust. 7 And when I started to see the problems, I 8 talked to Bob McGee about it. I assumed he talked to 9 his people. But eventually it got so bad that I 10 finally said, "Enough is enough. Give me back all my 11 equipment." The point being that I felt that my 12 trust was placed in the wrong place. 13 And soon after, the telephone 14 conversations between Tom and Bob stopped. He just 15 would not answer. Even today, I don't even know if 16 the poor guy is still alive, because I left several 17 voice messages for him throughout August and 18 September. I heard third-handedly that he was very 19 ill. 20 But the fact of the matter is the owner 21 of Emerald -- I, Tom Holt -- turned over all this 22 equipment to them to use for periods of months, 23 months, years, and never ever did I ask for letters 24 of credit, moneys being deposited, et cetera. I was

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12 (Pages 42 to 45)

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<p>1 quite content that your self-billing reports would 2 pay down my loan at MBC.</p> <p>3 Now, I don't know if that helps you or 4 don't help you. But that's how the foundation was 5 going forward, into that agreement.</p> <p>6 Q Payments under the -- under the 7 self-billing reports went to MBC?</p> <p>8 A That's correct.</p> <p>9 Q Did they ever go to Emerald?</p> <p>10 A No, sir.</p> <p>11 Q Over what period of time did Emerald 12 receive self-billing reports from Sea Star?</p> <p>13 A It went through '03. I think it stopped 14 sometime in August/September of '03. That's a 15 guesstimate.</p> <p>16 Q All of the payments under those reports 17 went to MBC during that period of time?</p> <p>18 A That was the agreement, that the moneys 19 would be paid to them for Sea Star utilizing Emerald 20 equipment to pay down Emerald's loan with MBC.</p> <p>21 Q When you spoke with Scott Krieger about 22 problems with the self-billing reports, what did he 23 say to you?</p> <p>24 A It's not his problem.</p>	<p>1 MBC and Emerald?</p> <p>2 There was a question being raised -- and 3 I don't know what period of time -- about an 4 indemnification meant (sic) that was in an agreement 5 between yourselves, Sea Star, and MBC. I was made 6 aware of it. I got copies of the documentation that 7 flew around.</p> <p>8 I don't know if that was in '05, '06. 9 Might have been '03. I just didn't -- somebody was 10 misinterpreting the document, and it wasn't my -- my 11 document. It was between MBC and Sea Star.</p> <p>12 Q Did you discuss with anyone regarding a 13 claim that information contained in the self-billing 14 reports was false and misleading?</p> <p>15 A Did I discuss with anyone?</p> <p>16 Q Yes.</p> <p>17 A I discussed it with Bob McGee. I 18 discussed it with, as I told you, Scott Krieger.</p> <p>19 Now, anyone after that? Obviously 20 counsel. Obviously, Lorraine and Arthur, Jack Evans. 21 I certainly did not put it in the Journal of 22 Commerce, if that's your question.</p> <p>23 Q When did you have discussions with 24 Lorraine Robins and Arthur Davis concerning the claim</p>
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<p>1 Q Did he say why? Is that all he said?</p> <p>2 A He asked me why. And I said, Bob, as far 3 as I know, they probably don't have the right idea on 4 how the clerk makes up the self-billing reports. I 5 don't know why.</p> <p>6 But the position is, Hey, Tom, I'm a 7 banker; I'm getting my loan reduced. Thank you very 8 much. I'm not involved in your agreement between 9 Emerald and Sea Star.</p> <p>10 Q When did you speak with Krieger about 11 that?</p> <p>12 A The fall of '02 and then into '03. Then 13 when I tried to find him later on, he had been 14 replaced. He left the bank.</p> <p>15 Q And do you recall approximately how many 16 discussions you had with him about the self-billing 17 reports?</p> <p>18 A Once he told me it wasn't his problem, I 19 stopped calling him on that issue.</p> <p>20 Q On what issues did you call him?</p> <p>21 A Then we had other business dealings, the 22 family did, with Mr. Krieger, that --</p> <p>23 Q I should say, what other Sea Star issues?</p> <p>24 A Well -- Sea Star. Sea Star issues with</p>	<p>1 that information contained in the self-billing 2 reports was false and misleading?</p> <p>3 A Literally, every time a self-billing 4 report showed up.</p> <p>5 And there came a time when I talked to 6 Krieger about the position that Sea Star was taking, 7 that they did not like the idea that their 8 self-billing reports were being ripped apart by 9 Lorraine. And this person complained bitterly to MBC 10 and took the position they weren't going to send any 11 more self-billing reports.</p> <p>12 Somewhere there's a couple of emails, 13 letters flying around that document that person's 14 position. I think it was somebody in Puerto Rico.</p> <p>15 Q How were the self-billing reports false?</p> <p>16 In other words, what information contained in the 17 self-billing reports was false?</p> <p>18 A I thought we covered this about 19 45 minutes ago. But again, I'll tell you.</p> <p>20 When the self-billing reports would be 21 presented, we would -- "we" being Lorraine and Arthur 22 and the office -- would gather all the information on 23 that, gather the information from where they could 24 find it -- i.e., railroads, truckers, Sea Star,</p>

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13 (Pages 46 to 49)

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1 stevedores, anywhere they could find where that piece
 2 of equipment was. And in some instances, we would
 3 find it where you paid 14 days; you truly should have
 4 paid 30 because the agreement was for a 30-day
 5 minimum. In some instances, where you paid for 79
 6 days but the equipment wasn't returned for 159 days.
 7 And all backed up by documentation.

8 And each one of those was corrected and
 9 sent back to Sea Star.

10 And that's why the person on the other
 11 side of the table at Sea Star says, I'm done playing
 12 around with this. I'm spending too much time trying
 13 to find out what's right and what's wrong. And
 14 that's the letters I'm talking about that went off to
 15 MBC.

16 Again, MBC's position is, We're not
 17 involved in this.

18 **Q How did the information contained in the
 19 self-billing reports mislead Emerald?**

20 A Misled us to the extent of the amount of
 21 dollars that the loan was not reduced.

22 And to be fair, there were some that we
 23 agreed with you that we then went and issued credits,
 24 where we were wrong.

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1 **Q What knowledge does Emerald have as to
 2 Sea Star's, quote, reckless difference as to the
 3 veracity of the information contained in the
 4 self-billing reports during preparation of the
 5 reports?**

6 A The attitude shown in the self-billing
 7 reports and the preparation of them showed a careless
 8 indifference, absolutely proving to me that I placed
 9 my trust in the wrong people; and that's why I
 10 demanded the equipment back.

11 I mean, you consider for a moment the
 12 equipment is leased out; we're getting paid rent,
 13 surely not the right amount. But so what? I didn't
 14 have to worry about getting that loan reduced at the
 15 bank.

16 But what did I do after I seen this --
 17 what I would call an arrogance on the part of the
 18 corporation for allowing this to continue, after time
 19 and again, I said, This is happening, straighten it
 20 out?

21 That I considered it, in my opinion, my
 22 trust literally was totally misplaced; and No. 2, I
 23 considered it fraud.

24 You well know you were using my equipment

1 and never paying for it, by leasing it to third
 2 parties. We never found that out until we got into
 3 discovery. And we don't even know if that's the only
 4 instance.

5 As far as I'm concerned, the whole thing
 6 showed a pattern that somebody deliberately was
 7 taking advantage of my trust in Sea Star's people and
 8 using it to their advantage.

9 I don't understand why. It was only
 10 money that -- Lord knows, you got a balance sheet
 11 that don't have to worry about a couple million
 12 dollars. Why you would expose yourself like this, I
 13 have no idea.

14 **Q When did you first become aware of this
 15 reckless indifference?**

16 A I started to see it in the attitude --

17 MR. MOLDOFF: Object to the form of the
 18 question, but --

19 THE WITNESS: I'm sorry.

20 MR. MOLDOFF: Go ahead.

21 THE WITNESS: I got to slow down.

22 MR. MOLDOFF: No, you can answer. But
 23 don't speculate.

24 THE WITNESS: If I'm speculating, tell

1 me, and I'll try to straighten it out for you.

2 I started to become aware of it with the
 3 self-billing reports and the amount of corrections
 4 that were on them. I mean, we're not talking one or
 5 two corrections. It's voluminous.

6 Then the arrogance of the Sea Star
 7 people: We're not going to do this. We're not going
 8 to report this anymore. We're not going to change
 9 this.

10 And they weren't complaining to us --
 11 "us," being Emerald. They were complaining to MBC.
 12 And MBC then said, Hey, we're not involved in this.

13 MR. MOLDOFF: Would you like to take a
 14 break?

15 THE WITNESS: No, I'm fine.

16 BY MR. ARMSTRONG:

17 **Q Did you first become aware of this in
 18 2002?**

19 MR. MOLDOFF: Objection to the form of
 20 the question.

21 THE WITNESS: I've answered that question
 22 nine ways.

23 MR. MOLDOFF: Object to the form of the
 24 question.

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14 (Pages 50 to 53)

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<p>1 BY MR. ARMSTRONG:</p> <p>2 Q I asked when did you first become aware?</p> <p>3 First.</p> <p>4 A Best of my knowledge, the pattern started</p> <p>5 showing up in the late third/early fourth quarter of</p> <p>6 '02.</p> <p>7 Now, that's to my best recollection. It</p> <p>8 certainly manifested itself when you got into '03.</p> <p>9 And absolutely when we got into some discovery, which</p> <p>10 shows where it was done. I mean, we saw in discovery</p> <p>11 documents between your people -- you must be aware of</p> <p>12 this, Counsel -- that they were saying, We can't do</p> <p>13 this anymore, we got to report this equipment.</p> <p>14 You read those documents between your</p> <p>15 people. I have, in discovery.</p> <p>16 Q Do you recall the documents you're</p> <p>17 talking about?</p> <p>18 A Yeah. It was a document that went</p> <p>19 from -- I don't remember the guy's name right now.</p> <p>20 But he sent it to the operating people in</p> <p>21 Puerto Rico: "We're being charged for this. Get rid</p> <p>22 of this equipment."</p> <p>23 And that's when they started backdating</p> <p>24 documents.</p>	<p>1 that are going on to get this resolved, it certainly</p> <p>2 shows that this company is not of the -- what's the</p> <p>3 word I want to use? -- of the ethics that I thought</p> <p>4 they had.</p> <p>5 So now you understand my feelings.</p> <p>6 Q What knowledge does Emerald have that Sea</p> <p>7 Star's preparation of the, quote, inaccurate</p> <p>8 self-billing reports, unquote, were with the</p> <p>9 intention of defrauding Emerald?</p> <p>10 A The preponderance of continuing the</p> <p>11 inaccurate, deliberate reporting of the self-billing</p> <p>12 reports. I'll give you one example.</p> <p>13 Q Okay.</p> <p>14 A You took our equipment and subleased it,</p> <p>15 never paid us for it. You subleased 75 pieces of</p> <p>16 equipment.</p> <p>17 When you look at the discovery that we</p> <p>18 were able to -- and that's only one piece that you</p> <p>19 let us have -- it violated our agreement. You were</p> <p>20 never allowed to take our equipment and give it to a</p> <p>21 third party; and you collected money. And not pay</p> <p>22 under the self-billing reports?</p> <p>23 Q Do you recall --</p> <p>24 A Forget whether you didn't pay it or you</p>
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<p>1 Look, you know this better than me. You</p> <p>2 obviously -- in what documents you sent to Emerald</p> <p>3 under discovery. Our whole claim is based on your</p> <p>4 documents and whatever documents we could find from</p> <p>5 the people we talked about.</p> <p>6 But the whole thing is your own</p> <p>7 documents.</p> <p>8 Q Do you recall what documents were being</p> <p>9 backdated?</p> <p>10 A The documents that all of a sudden, after</p> <p>11 several months, when somebody woke up and said, Gee,</p> <p>12 we better put this in the storage lot; and then,</p> <p>13 voilà, it showed up in the storage lot. But the</p> <p>14 documents were backdated several months: Your</p> <p>15 documents.</p> <p>16 Many instances, equipment that we had for</p> <p>17 sale, we had buyers that come into our area to</p> <p>18 inspect the equipment. I mean, we look at it on</p> <p>19 Tuesday; Wednesday it was gone. Where did it go?</p> <p>20 Well, it's on loan going up to Minneapolis.</p> <p>21 You know, I better just slow down a</p> <p>22 minute because, quite frankly, this demonstrates time</p> <p>23 and again the mistrust that I put in this company.</p> <p>24 And, boy, the issue today and all of the shenanigans</p>	<p>1 did pay it: You were not allowed to do it.</p> <p>2 Q Do you recall the name of the sublessee?</p> <p>3 A CSX Railroad.</p> <p>4 Q Do you recall when that sublease</p> <p>5 occurred?</p> <p>6 A The document will speak for itself.</p> <p>7 MR. MOLDOFF: If you recall.</p> <p>8 THE WITNESS: I don't recall the date. I</p> <p>9 don't recall what year.</p> <p>10 BY MR. ARMSTRONG:</p> <p>11 Q Okay.</p> <p>12 A I saw it. I was so infuriated -- I mean,</p> <p>13 how do you have a business relationship --</p> <p>14 MR. MOLDOFF: There's no question</p> <p>15 pending.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 MR. MOLDOFF: I know you want to vent,</p> <p>18 but this is not necessarily the place to vent.</p> <p>19 BY MR. ARMSTRONG:</p> <p>20 Q Did Emerald ever rely on Sea Star's</p> <p>21 self-billing reports?</p> <p>22 A Constantly.</p> <p>23 Q When did Emerald stop relying on the</p> <p>24 self-billing reports?</p>

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15 (Pages 54 to 57)

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<p>1 A I don't think we ever stopped. What we 2 were doing was taking the self-billing reports and 3 the various information we had at our disposal and 4 correcting them.</p> <p>5 Q So am I correct in understanding that you 6 weren't taking the self-billing reports as gospel?</p> <p>7 A Not when we seen how many mistakes were 8 in them.</p> <p>9 Remember one thing: This is -- Emerald 10 is a company that did not have 93 people in the back 11 room running numerous computers. We relied on the 12 trustworthiness of Sea Star.</p> <p>13 The agreement was, you pay the money to 14 MBC; the self-billing reports would come in; and we 15 accepted them until we started seeing, month after 16 month, mistakes.</p> <p>17 Now, when it became very obvious, that's 18 when I said, I can't trust them anymore. I canceled 19 your lease.</p> <p>20 What right person, in their right mind 21 frame, would cancel a lease when they were collecting 22 money -- sure, not the right amount. But as far as I 23 was concerned, you were probably going to destroy 24 another 2,000 pieces of equipment and I'd never see</p>	<p>1 a time frame of that '02. It was probably sometime 2 in -- whenever you started getting your self-billing 3 reports out.</p> <p>4 Q Do you recall any self-billing report 5 that Emerald did not correct?</p> <p>6 MR. MOLDOFF: If you know.</p> <p>7 BY MR. ARMSTRONG:</p> <p>8 Q If you know.</p> <p>9 A I don't know that question.</p> <p>10 Q Do you recall whether Emerald ever relied 11 on a report as being accurate after June 2002?</p> <p>12 A I don't know if you --</p> <p>13 MR. MOLDOFF: Object to the form of the 14 question.</p> <p>15 THE WITNESS: To me that question has 16 been answered several times.</p> <p>17 But clearly understand, the goal of 18 Emerald was to audit the self-billing reports of Sea 19 Star; and in that auditing is how we started to see 20 the pattern.</p> <p>21 BY MR. ARMSTRONG:</p> <p>22 Q When you say "audit," what do you mean?</p> <p>23 A I mean how much money was paid to the 24 bank. And let's not misunderstand what this</p>
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<p>1 it.</p> <p>2 At the moment in time, there were still 3 about 900 pieces that were unaccounted for by you 4 that we couldn't find on your self-billing reports. Now --</p> <p>6 MR. MOLDOFF: There's no question 7 pending.</p> <p>8 THE WITNESS: Enough. Enough already.</p> <p>9 BY MR. ARMSTRONG:</p> <p>10 Q When you're talking about canceling the 11 lease, are you referring to Alan Moldoff's letter in 12 October 2003?</p> <p>13 A If that's when it was, I asked my 14 attorney to cancel the lease.</p> <p>15 Q So that's when you decided to cancel the 16 lease?</p> <p>17 A Might have been a couple days before 18 that. I don't know.</p> <p>19 Q Well, in that time frame; is that 20 correct?</p> <p>21 A Yes, sir.</p> <p>22 Q Emerald started correcting the Sea Star 23 self-billing reports in May and June 2002; correct?</p> <p>24 A I don't know. I could tell you it was in</p>	<p>1 self-billing report is, because it was a self-serving 2 document, by Sea Star to Emerald, who trusted 3 implicitly the Sea Star people. Now, here we go: 4 All of a sudden we start to see all these mistakes. 5 Please, what's your next question?</p> <p>6 Q Did the audit include investigation as to 7 whether there were mistakes in the self-billing 8 reports?</p> <p>9 A That's how they came about, yeah.</p> <p>10 Q Would it be fair to say then that as far 11 as you were concerned, the self-billing report was 12 not accurate until Emerald had audited it?</p> <p>13 MR. MOLDOFF: Object to the form of the 14 question.</p> <p>15 THE WITNESS: I don't understand that 16 question. I could answer it this way: As far as 17 Emerald was concerned, they were relying on the 18 accuracy of your self-billing report.</p> <p>19 When it became obvious that there were 20 numerous mistakes in it, and when we complained to 21 your people about these mistakes, it then became very 22 obvious, the arrogance and the cavalier way that Sea 23 Star was treating Emerald.</p> <p>24 Hell, you came up with two self-billing</p>

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16 (Pages 58 to 61)

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<p>1 reports in one month. We didn't know which one was 2 right. But please, ask your questions. 3 BY MR. ARMSTRONG: 4 Q Are you referring to the self-billing 5 reports in September 2002? 6 A Yes. 7 Q And when you found out that there were 8 two self-billing reports in September 2002, what 9 action did you take? 10 A Whatever action the office did, they did. 11 MR. MOLDOFF: I object to the form of the 12 question. 13 BY MR. ARMSTRONG: 14 Q And who was responsible for taking that 15 action? 16 A The office, Lorraine or Arthur. Assuming 17 it was in -- yeah, Lorraine or Arthur. 18 Q Would it be fair to say that after you 19 began -- that is, after Emerald began discovering 20 mistakes -- Emerald didn't rely on the accuracy of 21 Sea Star's self-billing reports? 22 MR. MOLDOFF: Object to the form of the 23 question. 24 THE WITNESS: We certainly did not rely</p>	<p>1 THE WITNESS: I don't know. I don't 2 know -- asked and answered 19 times: It could have 3 been August; it could have been June. 4 MR. MOLDOFF: Don't speculate. If you 5 don't know, you don't know. 6 THE WITNESS: No, I'm trying to help him 7 out. 8 MR. MOLDOFF: So you don't know. 9 BY MR. ARMSTRONG: 10 Q Would Arthur Davis have more knowledge in 11 regard to that? 12 A Arthur and Lorraine. 13 Q Did you speak with anyone at Sea Star 14 regarding Emerald's reliance on the self-billing 15 reports to determine the rental fees for the Emerald 16 equipment? 17 A I personally talked to McGee in regards 18 to the fact that the self-billing reports were not 19 accurately showing the amount of moneys owed. That 20 was I, personally. 21 My other people were contacted virtually 22 on a daily basis between Emerald's office and your 23 offices -- various offices. 24 Q Do you know the names of any Sea Star</p>
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<p>1 on the accuracy. We had to then research how Sea 2 Star put together the self-billing report on 3 individual pieces of equipment; and then we had to 4 get as much information as we could on that 5 individual transaction. 6 When that was correlated and the 7 corrections made, they were immediately sent back to 8 the Sea Star people. 9 BY MR. ARMSTRONG: 10 Q Did Emerald audit every self-billing 11 report -- 12 A Yes. 13 Q -- submitted by Sea Star? 14 MR. MOLDOFF: If you know. And object to 15 the form of the question. 16 THE WITNESS: Emerald took every 17 self-billing report and corrected it; and as I told 18 you earlier, in some instances, it was to the favor 19 of Sea Star. 20 BY MR. ARMSTRONG: 21 Q Did that auditing begin in May or 22 June 2002? 23 MR. MOLDOFF: Object to the form of the 24 question.</p>	<p>1 people? 2 A Sitting here today, I cannot tell you 3 specifically their names. 4 Q And would it be Arthur Davis and Lorraine 5 Robins who would have been contacting these Sea Star 6 people? 7 A Yes. And -- and to that extent, it's 8 also in your documents. You know who the people are. 9 You've read the names. You've read the various 10 correspondence going back and forth. 11 Could I personally today sit here and 12 tell you that Mr. Bates did this or Mr. McGee did 13 that or Henry Aldridge did something else? No. The 14 fact of the matter is, it's in the documents -- your 15 documents, not my documents. 16 Q Was Emerald ever involved in collecting 17 rents based on Sea Star's usage of Emerald equipment? 18 MR. MOLDOFF: Object to the form of the 19 question. 20 THE WITNESS: I don't understand the 21 question. 22 BY MR. ARMSTRONG: 23 Q Did collections go through Emerald rather 24 than MBC with respect to usage of Emerald equipment?</p>

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17 (Pages 62 to 65)

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1 MR. MOLDOFF: Objection to the form of
2 the question. If you understand it, you can answer.

3 THE WITNESS: Well, if he's asking me did
4 Emerald collect any money directly from Sea Star, I
5 don't remember it; because the agreement was it was
6 to go to MBC to reduce Emerald's debt.

7 (Brief recess.)

8 MR. MOLDOFF: If we're going back on the
9 record, Mr. Holt wants to just clarify or clear up
10 some earlier testimony.

11 So, Mr. Holt, do you want to do that?

12 THE WITNESS: Well, I'll try to clarify
13 it to the best of my ability.

14 There was a question about who paid Jack
15 Evans and Mrs. Evans and Arthur Davis and Lorraine.
16 I had to refresh my memory and I had to go back and
17 look at it.

18 Jack Evans and Mrs. Evans were paid by
19 secured creditors and also Storage Transfer, who
20 subsequently bought the loan from MBC. Lorraine and
21 Arthur was never paid by Emerald. Emerald had no
22 money. And/or I believe Greenwich in, Greenwich --
23 well --

24 MR. MOLDOFF: Which was?

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1 THE WITNESS: They were working as agents
2 for Greenwich, yes.

3 MR. MOLDOFF: For MBC.

4 THE WITNESS: For MBC.

5 BY MR. ARMSTRONG:

6 Q Excuse me. Were working as agents for
7 MBC?

8 A MBC.

9 MR. MOLDOFF: If you know.

10 THE WITNESS: If I know. I know that
11 Greenwich was selling equipment. Emerald was selling
12 equipment. But the fact of the matter is, actual
13 payroll never came out of Emerald. Emerald did not
14 have any money.

15 BY MR. ARMSTRONG:

16 Q Did Greenwich pay Art Davis?

17 A To my knowledge --

18 Q If you know.

19 A To my knowledge, they did; and also
20 Lorraine.

21 Q Lorraine Robins?

22 A Yes.

23 Q And who were the secured creditors that
24 paid John Evans and his wife?

1 MR. MOLDOFF: If you know.

2 THE WITNESS: I want to tell you MBC, but
3 I'm not definitely sure about that. And at that
4 point in time, it was probably Storage Transfer.

5 BY MR. ARMSTRONG:

6 Q The Counterclaim -- or the Amended
7 Counterclaim refers to Emerald's ongoing work on
8 detailed invoices to Sea Star, setting forth the
9 amounts owed to Emerald under the equipment rental
10 agreement.

11 A You're reading from where, sir?

12 Q I'm looking at Paragraph 11 of Exhibit A;
13 and that refers to Paragraph 21 of the Amended
14 Counterclaim. This -- I'll be happy to show you.

15 A 21. Okay.

16 Yes, sir.

17 Q Is Emerald's work still ongoing?

18 MR. MOLDOFF: If you know.

19 THE WITNESS: It's not as active as it
20 used to be. But if we do find a piece of equipment
21 that comes out of the blue, we adjust invoices
22 accordingly. But virtually, we're shut down. It's
23 only when something comes into our lap voluntarily
24 rather than us going out and look for it.

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1 BY MR. ARMSTRONG:

2 Q Well, who is responsible at Emerald, or
3 for Emerald, to adjust invoices?

4 A That would be myself, Lorraine or Arthur.

5 Q You referred to corrected invoices.
6 Would adjusted invoices be corrections of Emerald
7 invoices?

8 A Corrected or adjusted is one and the
9 same.

10 MR. MOLDOFF: Objection to the form of
11 the question. But --

12 BY MR. ARMSTRONG:

13 Q When Emerald submitted corrected
14 self-billing reports, so to speak, to Sea Star, do
15 you know whether Sea Star responded to Emerald's
16 corrections?

17 A Yes.

18 Q Do you know whether Sea Star agreed with
19 Emerald's corrections?

20 A To my knowledge, they agreed; and to my
21 knowledge, they disagreed. And very, very definitely
22 took the position that they weren't going to be
23 changing any more self-billing reports.

24 Q When Sea Star agreed with Emerald

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18 (Pages 66 to 69)

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<p>1 corrections, do you know whether Sea Star changed its 2 self-billing reports to reflect that agreement?</p> <p>3 A I would tell you no, because the moneys 4 were never paid.</p> <p>5 Q The moneys were never paid to MBC?</p> <p>6 A Never paid to anybody, MBC or Emerald.</p> <p>7 Q Was there a period of time --</p> <p>8 A Or Storage Transfer.</p> <p>9 Q Was there a period of time when Emerald 10 was to receive direct payment of the per-diem rental 11 charges?</p> <p>12 A Only after the MBC loan was to be paid 13 off.</p> <p>14 Q Was the MBC loan ever paid off?</p> <p>15 A Not by Emerald.</p> <p>16 Q Was it paid off by anybody?</p> <p>17 A I have no knowledge of that.</p> <p>18 Q Do you have knowledge that the MBC loan 19 was ever paid off?</p> <p>20 A I have knowledge that MBC sold the loan.</p> <p>21 Q Well, do you have knowledge that Emerald 22 has ever been entitled to direct payments of any 23 per-diem rentals while the equipment rental agreement 24 was in effect?</p>	<p>1 THE WITNESS: I don't know.</p> <p>2 BY MR. ARMSTRONG:</p> <p>3 Q Have you seen that document before?</p> <p>4 A I probably did. I can't recall it 5 specifically.</p> <p>6 Q Was Art Davis responsible for locating 7 discrepancies on Sea Star's self-billing report?</p> <p>8 A He would be responsible to look at the 9 self-billing reports and audit them, yes.</p> <p>10 Q And do you know whether the self-billing 11 report was corrected by Sea Star?</p> <p>12 A I have no idea.</p> <p>13 Q In June 2002, was Emerald relying on the 14 accuracy of Sea Star's self-billing report?</p> <p>15 MR. MOLDOFF: Object to the form of the 16 question.</p> <p>17 THE WITNESS: Emerald always relied on 18 the accuracy of Sea Star's self-billing report. I 19 don't know if there was one in June. I can't speak 20 specifically to a self-billing report in June.</p> <p>21 BY MR. ARMSTRONG:</p> <p>22 Q If Emerald was relying on the accuracy of 23 Sea Star's self-billing report in May or June 2002, 24 what was the reason for auditing and looking for</p>
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<p>1 MR. MOLDOFF: Objection to the form of 2 the question.</p> <p>3 THE WITNESS: I don't have knowledge. 4 But the fact is, that was not the intent of the 5 agreement with MBC at Sea Star.</p> <p>6 BY MR. ARMSTRONG:</p> <p>7 Q Was the intent of the agreement what you 8 said before in regard to paying down the loan?</p> <p>9 A That's correct.</p> <p>10 MR. ARMSTRONG: Let me show you a copy of 11 a fax dated June 4th, 2002, that I'll ask the court 12 reporter to mark as Exhibit 2 for identification.</p> <p>13 (E.E.L. Exhibit 2 was marked for 14 identification.)</p> <p>15 BY MR. ARMSTRONG:</p> <p>16 Q Have you ever seen that document before?</p> <p>17 A This is probably one of the many 18 documents I talked about earlier. There was 19 communication went back and forth between Emerald and 20 Sea Star.</p> <p>21 Q At this time, Art Davis was auditing the 22 self-billing report?</p> <p>23 A I guess so.</p> <p>24 MR. MOLDOFF: If you know.</p>	<p>1 discrepancies?</p> <p>2 A The reason for looking for discrepancies 3 would be to see if there were any, based on 4 information that Emerald had.</p> <p>5 Q Was that a normal procedure, from the 6 beginning of the self-billing reports?</p> <p>7 A Only to look at the accuracy of the 8 report.</p> <p>9 Q And to point out any discrepancies; 10 correct?</p> <p>11 A Did it many times.</p> <p>12 MR. MOLDOFF: Objection to the form of 13 the question.</p> <p>14 BY MR. ARMSTRONG:</p> <p>15 Q Do you recall pointing out or Emerald 16 pointing out any discrepancies before June 2002?</p> <p>17 MR. MOLDOFF: If you know.</p> <p>18 THE WITNESS: No.</p> <p>19 MR. ARMSTRONG: Okay. Let me show you a 20 copy of an email from Lorraine Robins dated 21 June 26th, 2002. Have you ever seen that document? 22 I'll ask that the court reporter mark it 23 as Exhibit 3 for identification.</p> <p>24 (E.E.L. Exhibit 3 was marked for</p>

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19 (Pages 70 to 73)

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<p>1 identification.)</p> <p>2 THE WITNESS: This document I have not</p> <p>3 seen.</p> <p>4 BY MR. ARMSTRONG:</p> <p>5 Q Were you aware that Lorraine Robins was</p> <p>6 monitoring Sea Star in June 2002?</p> <p>7 A Was I aware that she was doing it --</p> <p>8 Q Yes.</p> <p>9 A -- in '02? In June of '02.</p> <p>10 MR. MOLDOFF: If you know.</p> <p>11 THE WITNESS: I don't know.</p> <p>12 BY MR. ARMSTRONG:</p> <p>13 Q Had you given Lorraine Robins any</p> <p>14 instructions or made any requests that she monitor</p> <p>15 Sea Star's activities in June 2002?</p> <p>16 A I can't speak of June. But I can tell</p> <p>17 you, I gave her instructions to start monitoring, as</p> <p>18 you call it -- or checking the correctness of their</p> <p>19 bills as these mistakes kept popping up.</p> <p>20 Q Do you know whether you gave her</p> <p>21 instructions before the date of this email?</p> <p>22 A I can't tell you when it was.</p> <p>23 MR. ARMSTRONG: Let me show you a copy of</p> <p>24 a Greenwich Terminals invoice dated March 6th,</p>	<p>1 A So you're talking after April 29th,</p> <p>2 '02?</p> <p>3 Q Yes.</p> <p>4 A And the question is MBC --</p> <p>5 Q Making claims against the NPR bankruptcy</p> <p>6 estate at that time for usage of Emerald equipment</p> <p>7 after April 29th, 2002.</p> <p>8 MR. MOLDOFF: If you know.</p> <p>9 THE WITNESS: I don't know.</p> <p>10 BY MR. ARMSTRONG:</p> <p>11 Q You don't recall?</p> <p>12 A Alls I recall was that MBC went into the</p> <p>13 court and said, "I want to sell this equipment; I</p> <p>14 have a loan against it."</p> <p>15 And the Court allowed them to. And then</p> <p>16 Emerald entered into the agreement to do the deal</p> <p>17 with Sea Star and MBC, and that's why we're here</p> <p>18 today on the self-billing reports. Best of my</p> <p>19 knowledge.</p> <p>20 MR. ARMSTRONG: All right. Let me show</p> <p>21 you two checks payable to Martin McDonald that I'll</p> <p>22 ask the court reporter to mark as composite Exhibit 5</p> <p>23 for identification.</p> <p>24 (E.E.L. Exhibit 5 was marked for</p>
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<p>1 2003, that I'll ask the court reporter to mark as</p> <p>2 Exhibit 4 for identification.</p> <p>3 (E.E.L. Exhibit 4 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. ARMSTRONG:</p> <p>6 Q Do you recognize that document?</p> <p>7 A I've never seen this document.</p> <p>8 Q Okay. Let me show you a copy of</p> <p>9 Exhibit 14 to the Storage Transfer deposition that I</p> <p>10 ask the court reporter -- strike that.</p> <p>11 Exhibit 14 to the Storage Transfer</p> <p>12 deposition: Have you ever seen that document before?</p> <p>13 A No, I never saw it.</p> <p>14 Q Do you recall having any communications</p> <p>15 with Scott Krieger or anyone else at MBC regarding</p> <p>16 MBC claims for use of Emerald equipment after</p> <p>17 April 29th, 2002, outside the equipment rental</p> <p>18 agreement?</p> <p>19 Let me rephrase it.</p> <p>20 A Please.</p> <p>21 Q Do you recall having discussions or</p> <p>22 communicating with anyone at MBC regarding MBC claims</p> <p>23 against NPR for use of Emerald equipment after</p> <p>24 April 29th, 2002?</p>	<p>1 identification.)</p> <p>2 BY MR. ARMSTRONG:</p> <p>3 Q Have you ever seen copies of those checks</p> <p>4 payable to McDonald?</p> <p>5 A First time I saw this was in the</p> <p>6 documents you handed me a minute ago. These checks</p> <p>7 I've never seen before.</p> <p>8 Q Okay. Did you have any communications</p> <p>9 with anyone at MBC concerning MBC's payments of</p> <p>10 McDonald?</p> <p>11 A The only thing that I was involved in in</p> <p>12 those days was for McDonald to find as much of the</p> <p>13 equipment as he could of Emerald's on behalf of MBC.</p> <p>14 So evidently -- I'm not speculating, but I guess he</p> <p>15 was working for MBC there.</p> <p>16 Q After April 29th, 2002, was there a</p> <p>17 procedure at Emerald in regard to taking inventories</p> <p>18 of Emerald equipment?</p> <p>19 A We relied on the inventories that came</p> <p>20 from NPR and then over to Sea Star.</p> <p>21 Q Did Emerald make its own inventories?</p> <p>22 A After the bankruptcy?</p> <p>23 Q Yes, sir.</p> <p>24 A I don't think we did. I'm not sure.</p>

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20 (Pages 74 to 77)

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<p>1 Q Let me show you a copy of Exhibit 20 to 2 the Storage Transfer deposition. 3 Have you ever seen those documents 4 before? 5 A I never seen this document before. 6 Q Well, I've given you two pieces of paper. 7 The first is an email, and the second is an 8 attachment to that email. The email states, in the 9 first sentence, "I've attached what I believe is the 10 current inventory of the Emerald equipment." 11 Do you know when that inventory was 12 prepared? 13 MR. MOLDOFF: If you know. 14 THE WITNESS: I don't know when it was 15 prepared, but I know the methodology. 16 BY MR. ARMSTRONG: 17 Q All right. Can you tell me the 18 methodology for preparation. 19 A They had an inventory that they knew was 20 Emerald equipment. And every time they sold it a 21 piece, or it was obviously in possession of Sea Star, 22 they just accounted for it on their internal 23 inventory that they maintained as Emerald. 24 Q All right. What was that inventory that</p>	<p>1 Q Was -- 2 A They had knowledge of inventory. 3 Q Was -- you referred to inventory that was 4 maintained by Sea Star -- 5 A Yes. 6 Q -- for some period of time. 7 A Yes. 8 Q There was also an inventory maintained by 9 one of the Holt companies after April 27th, 2002, 10 wasn't there? 11 A Okay. 12 MR. MOLDOFF: Object to the form. 13 BY MR. ARMSTRONG: 14 Q Was there? 15 A Probably was. You're talking about Holt 16 Logistics. 17 Q And how did that inventory differ from 18 the Sea Star inventory? 19 A Well, would be the equipment that Sea 20 Star did not take. 21 Q Well, would it have been the total 22 equipment? 23 A What -- 24 MR. MOLDOFF: Object to form.</p>
<p>1 they knew was Emerald equipment? 2 A What was it? 3 Q Yes, sir. 4 A It was a list of all the equipment of 5 Emerald's; and they added and subtracted as the days, 6 weeks and months went on. 7 Q Are you talking about the NPR inventory? 8 A No, NPR was gone. You're talking in 9 September of '03? 10 Q Yes, sir. 11 A They had the Emerald inventory that they 12 got from NPR that was maintained by Sea Star for a 13 period of time -- two months, three months, I don't 14 know. They probably even got inventories of Emerald 15 equipment that Sea Star had in their possession. 16 So from the total inventory of Emerald 17 equipment that Sea Star did not have or was just 18 laying around the world in other people's 19 possessions, they kept a record. 20 And this inventory is self-explanatory. 21 It tells the bank where equipment was at that moment 22 in time and how they were selling against it. The 23 letter is self-explanatory. But I never saw the 24 letter.</p>	<p>1 THE WITNESS: What company? 2 BY MR. ARMSTRONG: 3 Q Of Emerald. 4 A Sea Star did not take the total equipment 5 of Emerald. 6 Q I'm saying would the Holt Logistics 7 inventory have covered all of the Emerald equipment? 8 A Yes, sir. 9 Q Could this have been based on the Holt 10 Logistics inventory -- that is, the inventory that is 11 attached to the Davis September 25th email? 12 A I have no idea. 13 MR. MOLDOFF: If you know. 14 BY MR. ARMSTRONG: 15 Q Would it be fair to say then that you 16 don't know how this inventory attached to the 17 September 25th email was put together? 18 A I said that. I told you that I only know 19 their methodology. I don't know how he came to that 20 one. He probably did it by adding and subtracting 21 what the inventories were that he had in his control. 22 He had inventories, start and stop inventories. 23 Q He had Holt Logistics inventories in his 24 control, didn't he?</p>

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21 (Pages 78 to 81)

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<p>1 A I don't know. Do you know? I don't 2 know. If he did, he did.</p> <p>3 Q Didn't Arthur Davis work for Holt 4 Logistics?</p> <p>5 A I don't know if he worked for them in 6 September of '03.</p> <p>7 Q Did he have an email address at Holt 8 Logistics any time after April 29, 2002?</p> <p>9 MR. MOLDOFF: If you know.</p> <p>10 THE WITNESS: You would have to ask him.</p> <p>11 BY MR. ARMSTRONG:</p> <p>12 Q What is Holt Oversight?</p> <p>13 A It's Holt Logistics.</p> <p>14 Q Do you recognize the adavis@holtoversight 15 email address?</p> <p>16 A That's an email address, yes. Do I 17 recognize it? I assume it is his.</p> <p>18 You're asking me things that I'm not 19 privy to. You have to ask him. I wasn't there in 20 April of '03, at Holt Logistics.</p> <p>21 Q The first sentence of the second 22 paragraph states, "Lorraine and I believe the 23 invoices to Sea Star Line will total approximately 24 1 mil."</p>	<p>1 actual missing equipment that Sea Star owes for. 2 So you're confusing two documents there. 3 On one you're taking what he thinks is going to 4 happen, which has got nothing to do with the 5 \$4 million.</p> <p>6 Q Well, how much of the \$4 million is 7 rental?</p> <p>8 MR. MOLDOFF: If you know.</p> <p>9 THE WITNESS: At what point in time?</p> <p>10 BY MR. ARMSTRONG:</p> <p>11 Q As of the date the Amended Counterclaim 12 was filed. That Amended Counterclaim asked for 13 damages in excess of \$4 million.</p> <p>14 A Somewhere you'll find your self-billing 15 reports that were corrected probably equal -- and 16 this is off the top of my head; I haven't added it 17 up -- about 2,2-, 2,3- of unpaid rent; and then the 18 balance would be missing equipment that you never 19 returned.</p> <p>20 That's got nothing to do with what is the 21 supposition of Mr. Davis in that -- did you say 22 that's an email? In that document, whatever it is.</p> <p>23 BY MR. ARMSTRONG:</p> <p>24 Q Did you and Mr. Davis ever discuss his</p>
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<p>1 Did you have any discussions with 2 Lorraine Robins and Arthur Davis concerning the total 3 invoices to Sea Star Line?</p> <p>4 A No.</p> <p>5 Q Do you know how Arthur Davis developed 6 the belief that the invoices to Sea Star Line will 7 total approximately 1 mil, as stated in the 8 September 25th, 2003, email?</p> <p>9 A I don't know that -- how Mr. Evans' 10 mind -- Mr. Davis' mind works with regards to his 11 estimations.</p> <p>12 I can probably tell you that the ongoing 13 self-billing report is the document that he was 14 working from.</p> <p>15 I have no idea how much was billed to Sea 16 Star and paid to the bank.</p> <p>17 Q Do you know how the 1 mil total became, 18 quote, damages in excess of \$4 million, as alleged in 19 the Amended Counterclaim?</p> <p>20 A I think you're confusing one number with 21 another. You're taking the supposition of Mr. Davis 22 for rentals of a million dollars he thought would 23 happen versus the excess of \$4 million, which 24 consists of actual unpaid rent owed by Sea Star and</p>	<p>1 supposition as to what the invoices to Sea Star would 2 total any time in September or October 2003?</p> <p>3 MR. MOLDOFF: If you recall.</p> <p>4 THE WITNESS: Not to my recollection. We 5 always talked about numbers -- how much the fleet 6 would sell for, how much he could get for a 40-foot 7 chassis versus a 20; how much would the income be 8 that we could anticipate from Sea Star.</p> <p>9 We always felt that there would be far 10 significant moneys to pay off in the time frame that 11 Emerald was operating on.</p> <p>12 BY MR. ARMSTRONG:</p> <p>13 Q To pay off what?</p> <p>14 A To pay off the debt to MBC and give a 15 return to Emerald.</p> <p>16 Q Do you recall what the debt to MBC was in 17 September of 2003? That is, the Emerald debt.</p> <p>18 A Not exactly. I'm guesstimating it was 19 several millions of dollars. Some reason my mind 20 says 6, but I think it was a little less than that.</p> <p>21 I mean, the methodology -- if we were 22 paid, as we're entitled to, it probably comes close 23 to 6 million.</p> <p>24 Q Show you a copy of a letter dated</p>

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22 (Pages 82 to 85)

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<p>1 October 30th, 2003, that is Exhibit 19 to the 2 Storage Transfer deposition.</p> <p>3 Have you ever seen that letter before?</p> <p>4 A This is a letter from MBC addressed to</p> <p>5 Thomas Holt, Jr., who happens to be my son, at</p> <p>6 October 30th, '03. What's it say?</p> <p>7 I've never seen this letter.</p> <p>8 MR. MOLDOFF: I would also, for the</p> <p>9 record, note that I'm not sure where or how that</p> <p>10 relates to any of the -- the Amended Counterclaim or</p> <p>11 any of the areas of listed testimony on the Notice of</p> <p>12 Deposition, unless Counsel can direct me to how it</p> <p>13 relates to any of the areas listed.</p> <p>14 BY MR. ARMSTRONG:</p> <p>15 Q Were you going to buy the debt from MBC?</p> <p>16 A No, sir.</p> <p>17 Q Do you know what the basis of the 18 statement, "As you're probably aware, we have 19 negotiated a deal in principle to sell MBC Leasing's 20 Emerald loan documents to your father effective 21 11/1/03"?</p> <p>22 A No, sir.</p> <p>23 Q Did you have any discussions with 24 Lorraine Robins regarding establishing Storage</p>	<p>1 Q Did anyone ever ask Emerald to join into 2 the Loan Sale and Assignment Agreement, which has 3 been marked as Exhibit 2 to the Storage Transfer 4 deposition?</p> <p>5 MR. MOLDOFF: Could we just finish our</p> <p>6 colloquy before the witness left? You were</p> <p>7 explaining why you think this inquiry --</p> <p>8 MR. ARMSTRONG: There are questions as to</p> <p>9 damage. There are questions as --</p> <p>10 MR. MOLDOFF: Could you just let me</p> <p>11 finish.</p> <p>12 MR. ARMSTRONG: Well, you're asking me to</p> <p>13 explain.</p> <p>14 MR. MOLDOFF: Well, let me finish asking</p> <p>15 it.</p> <p>16 MR. ARMSTRONG: All right.</p> <p>17 MR. MOLDOFF: -- how it relates to any of</p> <p>18 the areas listed in the deposition notice.</p> <p>19 MR. ARMSTRONG: And I've told you: It</p> <p>20 relates to the damages claimed by Emerald, not only</p> <p>21 as to amount but also as to right.</p> <p>22 MR. MOLDOFF: Well, that's a defense.</p> <p>23 This question is just about the damages. That's your</p> <p>24 defense.</p>
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<p>1 Transfer?</p> <p>2 A No, sir.</p> <p>3 Q Were you aware of the Loan Sale and 4 Assignment Agreement signed by Storage Transfer on 5 November 1st, 2003?</p> <p>6 MR. MOLDOFF: Counsel, could you please</p> <p>7 tell me, before I let him respond to that question,</p> <p>8 which area of testimony that you have appended to</p> <p>9 your Notice of Deposition that relates to the</p> <p>10 question you just asked.</p> <p>11 MR. ARMSTRONG: It relates to the</p> <p>12 damages.</p> <p>13 MR. MOLDOFF: How does it relate to the</p> <p>14 damages? The damages arise out of the invoices that</p> <p>15 have been submitted --</p> <p>16 MR. ARMSTRONG: Well, as you know,</p> <p>17 Counsel, there's a question --</p> <p>18 THE WITNESS: Excuse me, I'll interrupt.</p> <p>19 While you guys are duking it out, I'll go to the</p> <p>20 boys' room.</p> <p>21 MR. ARMSTRONG: Okay.</p> <p>22 (Brief recess.)</p> <p>23 (Record read.)</p> <p>24 BY MR. ARMSTRONG:</p>	<p>1 MR. ARMSTRONG: So what?</p> <p>2 MR. MOLDOFF: So the area of testimony</p> <p>3 relates to the damage that we claim --</p> <p>4 MR. ARMSTRONG: Are you instructing the</p> <p>5 witness not to answer?</p> <p>6 MR. MOLDOFF: Let me hear the question,</p> <p>7 and we'll take it from there. But I'm going to limit</p> <p>8 it, because that's not what the area of testimony --</p> <p>9 MR. ARMSTRONG: Well, you decide to do</p> <p>10 what you're going to do, and then we'll deal with it.</p> <p>11 MR. MOLDOFF: Fine.</p> <p>12 BY MR. ARMSTRONG:</p> <p>13 Q Did anyone ever ask Emerald Equipment to 14 join in the Loan Sale and Assignment Agreement that 15 is Exhibit 2 to the Storage Transfer deposition?</p> <p>16 MR. MOLDOFF: If you understand the</p> <p>17 question. I object to the form.</p> <p>18 THE WITNESS: I don't understand the</p> <p>19 question.</p> <p>20 BY MR. ARMSTRONG:</p> <p>21 Q Did anyone --</p> <p>22 A Emerald is not party to that agreement.</p> <p>23 Q And did anyone ever ask Emerald to become 24 a party to the agreement?</p>

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23 (Pages 86 to 89)

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<p>1 A To that agreement, no. To Emerald's 2 position with regards to a carve-out to protect its 3 creditors. I don't know if it's part of or not part 4 of that document you just showed me.</p> <p>5 Q Let me show you a letter dated 6 February 25th, 2004, that is Exhibit 10 to the 7 Storage Transfer deposition; and a letter dated 8 February 25th, 2004, that is Exhibit 11 to the 9 Storage Transfer deposition.</p> <p>10 Q Do you recognize those documents?</p> <p>11 A Yes, sir.</p> <p>12 Q What are those documents?</p> <p>13 A They're self-explanatory. I'm not a 14 lawyer. I told you that several times.</p> <p>15 But the one, Exhibit 10, says, 16 "contribution to the Emerald estate"; and 11 says 17 "carve-out."</p> <p>18 Q When was the first discussion about a 19 contribution to the Emerald estate by Storage 20 Transfer?</p> <p>21 A When did I want a contribution to Emerald 22 with regards to --</p> <p>23 Q I'm asking when the first discussion was.</p> <p>24 A I couldn't tell you that. I don't really</p>	<p>1 Q Was it -- 2 A The time frame? I don't know.</p> <p>3 Q Was there a discussion regarding a 4 carve-out to the Emerald estate before the loan 5 transfer -- Loan Sale and Assignment Agreement was 6 signed?</p> <p>7 MR. MOLDOFF: Asked and answered.</p> <p>8 THE WITNESS: I don't know. I -- I'm 9 sorry. I don't remember the dates.</p> <p>10 BY MR. ARMSTRONG:</p> <p>11 Q When did you first see the two letters 12 dated February 25th, 2004?</p> <p>13 MR. MOLDOFF: If you know.</p> <p>14 THE WITNESS: These letters here were 15 copied to me in February '04.</p> <p>16 BY MR. ARMSTRONG:</p> <p>17 Q Were they -- 18 A When I had seen them, I don't remember.</p> <p>19 Q Okay. Were they written at your 20 direction?</p> <p>21 MR. MOLDOFF: If you know.</p> <p>22 THE WITNESS: At my direction, per se? I 23 would have to tell you I was protected in the Emerald 24 estate, because the bottom line is, they didn't have</p>
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<p>1 know. It was sometime involved in whenever the 2 transaction was taking place.</p> <p>3 Q What transaction are you referring to?</p> <p>4 A The purchase of the loan by Storage 5 Transfer. It was my loan. I was the one that owed 6 the money to Emerald.</p> <p>7 Q Okay. Storage Transfer was purchasing -- 8 A The loan.</p> <p>9 Q -- the Emerald loan from MBC.</p> <p>10 A Yes.</p> <p>11 Q Was part of that purchase to involve a 12 carve-out to the Emerald estate?</p> <p>13 MR. MOLDOFF: Object to the form of the 14 question. If you know.</p> <p>15 THE WITNESS: I'm confused with the 16 question, because we have these two documents here, 17 and they're self-explanatory. But I don't understand 18 the question.</p> <p>19 BY MR. ARMSTRONG:</p> <p>20 Q Well, when did the question regarding a 21 carve-out to the Emerald estate come up?</p> <p>22 MR. MOLDOFF: If you know.</p> <p>23 THE WITNESS: I don't know.</p> <p>24 BY MR. ARMSTRONG:</p>	<p>1 to do a carve-out. Just like MBC did not have to 2 give me time to pay off their loan.</p> <p>3 If they called the loan, Emerald is gone. 4 Emerald is in bankruptcy when this was going on. We 5 were trying to protect the creditors.</p> <p>6 BY MR. ARMSTRONG:</p> <p>7 Q Did Emerald pay any money in exchange for 8 this carve-out?</p> <p>9 A Why would Emerald pay any money? They 10 were the debtor.</p> <p>11 Q What was the -- what was the 12 consideration for the carve-out?</p> <p>13 A That Emerald would survive. That their 14 creditors would hopefully get some money.</p> <p>15 MR. MOLDOFF: Object to the form of the 16 question; calls for a legal conclusion.</p> <p>17 THE WITNESS: I don't know how that 18 question even gets involved with this. I had nothing 19 to do with Storage.</p> <p>20 BY MR. ARMSTRONG:</p> <p>21 Q You referred to Sea Star's possession of 22 Emerald's equipment.</p> <p>23 A Please don't tell me you didn't have it. 24 Is that where you're going?</p>

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24 (Pages 90 to 93)

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<p>1 Q Let me show you a copy of a note dated 2 May 11th, 2004, that's Exhibit 16 to the Storage 3 Transfer deposition.</p> <p>4 Q Have you ever seen that document before?</p> <p>5 A No, sir.</p> <p>6 Q Were you aware that -- did you ever 7 become aware that Arthur Davis was instructing Sea 8 Star not to release Emerald equipment?</p> <p>9 A I'm not aware of this document. Does 10 Arturo work for Sea Star?</p> <p>11 I don't know who this was sent to. I 12 don't know the person and I don't know --</p> <p>13 MR. MOLDOFF: If you don't know, just say 14 you don't know.</p> <p>15 THE WITNESS: I don't know.</p> <p>16 BY MR. ARMSTRONG:</p> <p>17 Q Did you ever become aware that Arthur 18 Davis instructed Sea Star not to release Emerald 19 equipment?</p> <p>20 A At what time frame?</p> <p>21 Q Let's start with any time frame.</p> <p>22 A Well, certainly in the instance of when 23 Emerald had the lease, we would not ask Sea Star to 24 release equipment to a third party without giving you</p>	<p>1 identification.)</p> <p>2 BY MR. ARMSTRONG:</p> <p>3 Q Have you ever seen that letter before?</p> <p>4 A Yes, I saw it.</p> <p>5 Q Do you recall when you first saw it?</p> <p>6 A When it was brought up to me.</p> <p>7 Q Was it your understanding that Sea Star 8 was not storing any Emerald equipment at the time 9 that letter was sent?</p> <p>10 MR. MOLDOFF: Object to the form of the 11 question.</p> <p>12 THE WITNESS: I don't know. They should 13 not have been.</p> <p>14 This looks like a piece of equipment they 15 had in their possession if it's under the lease 16 agreement between Sea Star and Emerald. Evidently 17 you found some equipment you wanted to return several 18 months later, of the termination.</p> <p>19 BY MR. ARMSTRONG:</p> <p>20 Q Let me show you a copy of Exhibit 17 to 21 the Storage Transfer deposition.</p> <p>22 Q Have you ever seen that document before?</p> <p>23 A No, I have never seen it.</p> <p>24 MR. ARMSTRONG: Let me show you a copy of</p>
Page 91	Page 93
<p>1 specific authority.</p> <p>2 As to what Storage Transfer and Emerald 3 were doing here, I don't know. I never saw this.</p> <p>4 Q Was Arthur Davis representing Emerald in 5 May 2004?</p> <p>6 MR. MOLDOFF: If you know.</p> <p>7 THE WITNESS: I can't tell you if I know 8 or don't know.</p> <p>9 In May of '04, Storage Transfer owned the 10 loan and Emerald had the lease. Emerald did not tell 11 Arthur to write that email.</p> <p>12 BY MR. ARMSTRONG:</p> <p>13 Q Did you ever become aware that equipment 14 was being stored at Sea Star's terminal in San Juan 15 during 2004?</p> <p>16 A I don't know. This is a period after the 17 time that you were to have returned all of Emerald's 18 equipment. So I don't know anything about these 19 documents -- or that document. If you're reading 20 something else, let me see it.</p> <p>21 MR. ARMSTRONG: I'll show you a copy of a 22 letter dated June 29th, 2004, that I'll ask the court 23 reporter to mark as Exhibit 6 for identification.</p> <p>24 (E.E.L. Exhibit 6 was marked for</p>	<p>1 a document that I'll ask the court reporter to mark 2 as Exhibit 7 to this deposition.</p> <p>3 (E.E.L. Exhibit 7 was marked for 4 identification.)</p> <p>5 BY MR. ARMSTRONG:</p> <p>6 Q Have you ever seen that document before?</p> <p>7 A No, sir, I never saw it.</p> <p>8 Q Let me show you a copy of Exhibit 21 to 9 the Storage Transfer deposition. Have you seen that 10 document before?</p> <p>11 A It's a lot of equipment. No, I never saw 12 it before.</p> <p>13 Q Did you ever become aware of an inventory 14 of equipment at Vega Alta in December 2004?</p> <p>15 A I'm not specifically aware of that. I 16 know that people were down there on behalf of Emerald 17 trying to find their equipment. If that was an 18 inventory taken, I'll accept you saying it.</p> <p>19 We had people all over the place trying 20 to --</p> <p>21 Q Do you know what Vega Alta is?</p> <p>22 A It's a town somewhere in Puerto Rico, to 23 my knowledge.</p> <p>24 Q Do you know whether Emerald had a storage</p>

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25 (Pages 94 to 97)

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<p>1 facility at Vega Alta?</p> <p>2 A I have no clue. You'd have to ask Art</p> <p>3 Davis.</p> <p>4 Q Art Davis would not have asked you before</p> <p>5 entering into agreement for a storage facility at</p> <p>6 Vega Alta?</p> <p>7 MR. MOLDOFF: Object to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: I don't know if he would</p> <p>10 have asked me. If he had said, Gee, I need a storage</p> <p>11 yard, I would have said yes.</p> <p>12 I don't even know where that place is.</p> <p>13 Is it on the island?</p> <p>14 BY MR. ARMSTRONG:</p> <p>15 Q It's in Puerto Rico.</p> <p>16 A Good. I just learned something.</p> <p>17 Q You never became aware of any storage</p> <p>18 yard for Emerald equipment at Vega Alta?</p> <p>19 A I knew there were storage yards. Where?</p> <p>20 I don't know. How many? I would tell you no more</p> <p>21 than two, because I probably would not have wanted to</p> <p>22 go for the expense.</p> <p>23 Q Do you know whether Emerald has made</p> <p>24 claims against Sea Star for stipulated loss values of</p>	<p>1 Q You would invoice for equipment that was</p> <p>2 in your storage yard and claim a stipulated loss</p> <p>3 value; is that correct?</p> <p>4 MR. MOLDOFF: Object to the form of the</p> <p>5 question. Answer if you know.</p> <p>6 THE WITNESS: Yeah, I answered it.</p> <p>7 MR. MOLDOFF: Asked and answered.</p> <p>8 THE WITNESS: Asked and answered.</p> <p>9 If you had not terminated the agreement</p> <p>10 the way it was supposed to be, we have no clue what</p> <p>11 equipment is anywhere in your possession. For all we</p> <p>12 know, you might have entered the terminal one night</p> <p>13 and threw it out in the street.</p> <p>14 MR. MOLDOFF: And as Mr. Armstrong knows,</p> <p>15 in areas where -- or instances where equipment was</p> <p>16 later located, it was not returned by Sea Star,</p> <p>17 stipulated loss values were charged but they were</p> <p>18 adjusted.</p> <p>19 MR. ARMSTRONG: Are you making an</p> <p>20 argument at this point, Counsel? Or are you</p> <p>21 answering a question?</p> <p>22 MR. MOLDOFF: It's a statement, and</p> <p>23 you're well aware of it.</p> <p>24 THE WITNESS: That's a statement of fact.</p>
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<p>1 equipment that was in the Vega Alta storage yard?</p> <p>2 A I do not know that.</p> <p>3 MR. MOLDOFF: If you know.</p> <p>4 THE WITNESS: If it was under lease to</p> <p>5 you, a claim would have been made wherever it was.</p> <p>6 BY MR. ARMSTRONG:</p> <p>7 Q Even if it was in an Emerald storage</p> <p>8 yard?</p> <p>9 A Even if it was under my Christmas tree,</p> <p>10 if it was in your possession, we still would have</p> <p>11 invoiced you.</p> <p>12 Q And would you have invoiced for a</p> <p>13 stipulated loss value if it was under your Christmas</p> <p>14 tree?</p> <p>15 A If it was in your possession and never</p> <p>16 returned to us, you would be invoiced.</p> <p>17 Q If it was in your storage yard, would it</p> <p>18 have been returned to you?</p> <p>19 A I don't know how it got to that storage</p> <p>20 yard. I would have to document it. And this is what</p> <p>21 you and I are talking about: We would have to follow</p> <p>22 the flow of the documentation.</p> <p>23 If you did not have it terminated under</p> <p>24 your agreement with Emerald, we would invoice you.</p>	<p>1 BY MR. ARMSTRONG:</p> <p>2 Q Let me show you a copy of a document</p> <p>3 entitled Order Approving the Stipulation Between Sea</p> <p>4 Star Line and the Debtor Regarding Disposition of</p> <p>5 Certain Equipment.</p> <p>6 Are you aware of that order?</p> <p>7 A I don't understand what this says. Who</p> <p>8 entered into this? MBC and Sea Star?</p> <p>9 Q It looks like Emerald and Sea Star, sir.</p> <p>10 A Hold on. I'll refer to my counsel,</p> <p>11 because I don't understand it.</p> <p>12 Q All I'm asking you is, are you aware of</p> <p>13 that order?</p> <p>14 MR. MOLDOFF: If you recall.</p> <p>15 THE WITNESS: I don't know what it is.</p> <p>16 Is it a sale of Emerald's equipment to Sea Star? If</p> <p>17 that's what it is, I was aware that you bought</p> <p>18 equipment. But what's this mean? I don't understand</p> <p>19 it.</p> <p>20 BY MR. ARMSTRONG:</p> <p>21 Q I'm showing you a document.</p> <p>22 A I never saw it before.</p> <p>23 Q Are you aware of that document?</p> <p>24 A I never saw it before. I don't know what</p>

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<p>1 it is. You'll have to tell me what it means. Then 2 it could refresh my memory.</p> <p>3 Q You've never seen it before? 4 A To my knowledge, I have not.</p> <p>5 MR. ARMSTRONG: All right. Can I ask 6 that this be marked as 8.</p> <p>7 (E.E.L. Exhibit 8 was marked for 8 identification.)</p> <p>9 BY MR. ARMSTRONG:</p> <p>10 Q As part of your damage claim -- 11 A I'm not done reading it, so give me a 12 minute here.</p> <p>13 MR. MOLDOFF: For the record, it was a 14 settlement of an issue that arose regarding equipment 15 that was remaining in court or going -- there was a 16 continuing dispute. But it was a settlement that was 17 approved by the bankruptcy court with respect to the 18 disposition of that equipment pursuant to the 19 stipulation.</p> <p>20 THE WITNESS: Then it is what it is.</p> <p>21 MR. MOLDOFF: And the document speaks for 22 itself.</p> <p>23 BY MR. ARMSTRONG:</p> <p>24 Q Does part of your damage claim relate to</p>	<p>1 MR. MOLDOFF: Are you saying -- 2 BY MR. ARMSTRONG:</p> <p>3 Q Does part of your claim relating to 4 Emerald equipment cover equipment that was located in 5 the Dominican Republic on or before April 27th, 6 2002?</p> <p>7 MR. MOLDOFF: Do you mean if it was 8 thereafter used by Sea Star? I object to the form of 9 the question.</p> <p>10 THE WITNESS: Well, let's first 11 establish, when did you buy the company?</p> <p>12 BY MR. ARMSTRONG:</p> <p>13 Q I think we went through that a couple of 14 hours ago.</p> <p>15 A We went through a lot.</p> <p>16 Q The document -- the order was entered on 17 April 27th -- I'm sorry -- April 26th, and the 18 closing occurred by the transfer of funds on 19 April 27th.</p> <p>20 A So April 29th, you had possession of 21 the Emerald equipment.</p> <p>22 Q That's a comment by you.</p> <p>23 A Yes.</p> <p>24 Q Now, I'm asking you --</p>
Page 99	Page 101
<p>1 equipment that was located in the Dominican Republic 2 on April 27th, 2002?</p> <p>3 A Sitting here, I can't tell you without 4 going into all the documents.</p> <p>5 We -- you're now talking about equipment 6 you never returned? Is that what you're suggesting?</p> <p>7 Q I'm not suggesting anything. I'm -- 8 A What's your question then?</p> <p>9 Q I'm asking you a question.</p> <p>10 Does part of your damage claim -- 11 A Right.</p> <p>12 Q -- that is, Emerald's damage claim -- 13 A Right.</p> <p>14 Q -- relate to equipment that was in the 15 Dominican Republic on April 27th?</p> <p>16 MR. MOLDOFF: In other words, the 17 question relates to either rental payments and/or --</p> <p>18 THE WITNESS: Prior to April --</p> <p>19 MR. MOLDOFF: -- stipulated loss value.</p> <p>20 I object to the question.</p> <p>21 BY MR. ARMSTRONG:</p> <p>22 Q On or before April 27th, 2002.</p> <p>23 A We would not invoice you on or before 24 April 27th, '02.</p>	<p>1 A It's a fact.</p> <p>2 Q -- a question.</p> <p>3 A You took over Emerald's equipment as of 4 the closing. You either would return it within two 5 weeks after the closing or you were using it. If you 6 returned it, you would not be charged.</p> <p>7 Q Does part of Emerald's claim relate to 8 equipment that was located in the Dominican Republic 9 on or before April 27th, 2002?</p> <p>10 MR. MOLDOFF: Object to the form of the 11 question.</p> <p>12 THE WITNESS: April 29th or 27th?</p> <p>13 BY MR. ARMSTRONG:</p> <p>14 Q April 27th.</p> <p>15 A And that's prior to you buying the 16 company.</p> <p>17 Q April 27th, 2002.</p> <p>18 MR. MOLDOFF: Object to the form of the 19 question.</p> <p>20 THE WITNESS: It is, so -- I don't 21 understand the question. I leave it at that.</p> <p>22 BY MR. ARMSTRONG:</p> <p>23 Q You don't understand what Emerald's claim 24 is with respect to equipment located in the Dominican</p>

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27 (Pages 102 to 105)

		Page 102	Page 104
1	Republic?		
2	MR. MOLDOFF: Mr. Armstrong, as you are		1 Republic after April 27th, 2002?
3	well aware, if Sea Star used the equipment, it is		2 A After; not before.
4	listed on the invoices.		3 Q Did you communicate, after April 27th,
5	MR. ARMSTRONG: Counselor, you're abusing		4 2002, with Teddy Heinsen regarding equipment in the
6	your privilege in this deposition --		5 Dominican Republic?
7	MR. MOLDOFF: I'm not abusing my		6 A I did not personally. Arthur and
8	privilege.		7 Lorraine had extensive conversation with Teddy after
9	MR. ARMSTRONG: -- and I shall take --		8 the sale of NPR to Sea Star and the possession taken
10	MR. MOLDOFF: That's fine.		9 of Sea Star of Emerald's equipment.
11	MR. ARMSTRONG: -- measures under the		10 Q And did Lorraine and Arthur report to you
12	rules.		11 regarding their extensive conversations with Teddy
13	MR. MOLDOFF: That's fine.		12 Heinsen?
14	MR. ARMSTRONG: You are not entitled to		13 A They kept me advised.
15	sit there and argue --		14 Q And what did Lorraine and Arthur tell
16	MR. MOLDOFF: The witness does not		15 you?
17	understand the question. I'm trying to make it		16 A They told me that there was a lot of
18	understandable for him.		17 equipment down there; that Teddy felt he should have
19	MR. ARMSTRONG: Well, then I'll try to		18 been paid by NPR, who was liquidated; that he should
20	make it understandable.		19 have been paid by Emerald, who was liquidated; but
21	MR. MOLDOFF: Okay. Well, give it		20 who Sea Star was taking possession of the equipment
22	another shot.		21 to use for their benefit.
23	BY MR. ARMSTRONG:		22 And our position was, take that up with
24	Q Do you know what your claim is -- that		23 Sea Star.
			Q And did Teddy Heinsen tell you that he
		Page 103	Page 105
1	is, what Emerald's claim is -- with respect to		
2	equipment in the Dominican Republic?		1 was -- or tell Lorraine and Arthur that he had a lien
3	A I know my claim. Whether it's in the		2 on the Emerald equipment?
4	Dominican Republic or wherever else the equipment was		3 A Teddy Heinsen never talked to me. He
5	used by Sea Star is my claim. And the records speak		4 talked to Lorraine and Arthur. And there were
6	for themselves.		5 several other people involved in it, including some
7	Q What do you know about your claim with		6 Sea Star people.
8	respect to equipment in the Dominican Republic?		7 It was all resolved, to my knowledge.
9	MR. MOLDOFF: Object to the form of the		8 That's about the best I can help you with regards to
10	question.		9 Teddy Heinsen.
11	THE WITNESS: I don't even know if there		10 Q Were you aware of any meetings involving
12	was equipment then on the 27th of April. I'm just		11 Arthur Davis and Martin McDonald in the Dominican
13	trying to tell you that, if there was and if it was		12 Republic with Teddy Heinsen?
14	in your possession, you would have been invoiced for		13 A Marty McDonald could have been there. I
15	it.		14 don't think Arthur ever went there, to my knowledge.
16	Now, can you tell me if you had equipment		15 He might have.
17	then?		16 No, I'm not aware of any. But it could
18	BY MR. ARMSTRONG:		17 have happened in the normal course of business.
19	Q Do you know Teddy Heinsen?		18 Q Do you know whether Arthur Davis and
20	A Then you know as much as I do about this		19 Marty McDonald went to the Dominican Republic in an
21	question you're asking.		20 attempt to retrieve equipment from Teddy Heinsen --
22	I know Teddy Heinsen.		21 that is, Emerald equipment?
23	Q Did you have any communications with		22 A I do believe I just answered that
24	Teddy Heinsen regarding equipment in the Dominican		23 question: I'm not aware of them going there.
			24 Would they have gone there? The normal

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28 (Pages 106 to 109)

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<p>1 course of business to retrieve equipment that was in 2 the possession of Sea Star, they would have went 3 there. If it was in the possession of Teddy Heinsen 4 on behalf of Emerald, they would have went there. 5 I do know that Mr. Heinsen purchased a 6 lot of equipment from Emerald.</p> <p>7 Q Do you know when Mr. Heinsen purchased 8 that equipment from Emerald?</p> <p>9 A Throughout the course of a couple of 10 years.</p> <p>11 MR. ARMSTRONG: Let me show you a copy of 12 a document entitled Notice of Maritime Liens Asserted 13 by E. T. Heinsen C Por A and Naves Y Terminales, S.A. 14 and I'll ask the court reporter to mark as Exhibit 9 15 for identification.</p> <p>16 (E.E.L. Exhibit 9 was marked for 17 identification.)</p> <p>18 THE WITNESS: Counsel, what's this have 19 to do with why I'm here today?</p> <p>20 BY MR. ARMSTRONG:</p> <p>21 Q Have you ever seen that document before?</p> <p>22 MR. MOLDOFF: You can answer the question 23 if you can.</p> <p>24 THE WITNESS: I've never seen this</p>	<p>1 Q Did you participate in any resolution of 2 a Heinsen maritime lien claim?</p> <p>3 A I didn't get an answer to my question. 4 We're talking here about equipment that you're making 5 an allegation to. I want to know if you know that as 6 fact.</p> <p>7 Q Did you participate —</p> <p>8 MR. MOLDOFF: He doesn't have to answer 9 your question.</p> <p>10 BY MR. ARMSTRONG:</p> <p>11 Q -- in any resolution of the Heinsen 12 maritime lien claim?</p> <p>13 A I participated between Lorraine and 14 Arthur Davis. I did not get involved with the 15 lawyers. I did not get involved with Teddy Heinsen.</p> <p>16 Q Did Arthur Davis report to you that the 17 maritime lien claim asserted by E. T. Heinsen had 18 been resolved?</p> <p>19 A What I can remember, the issue between 20 Heinsen and this document was resolved. How, I don't 21 know.</p> <p>22 Q Do you know when it was resolved?</p> <p>23 A I thought within a matter of weeks of it.</p> <p>24 Q How did you gain that information?</p>
Page 107	Page 109
<p>1 document. I don't even know what it is. Is it a 2 claim for stevedoring? A claim for 3 stevedoring-related services.</p> <p>4 MR. MOLDOFF: Just answer the question.</p> <p>5 THE WITNESS: I never saw the document.</p> <p>6 BY MR. ARMSTRONG:</p> <p>7 Q Did you ever become aware that Heinsen 8 was claiming maritime liens on Emerald equipment as 9 of April 25th, 2002?</p> <p>10 A I answered that before: Yes, I knew that 11 he was attempting to hold Emerald equipment under a 12 lien. What equipment, I don't know what it was, but 13 it had been resolved.</p> <p>14 Q Do you know when it was resolved?</p> <p>15 A I would think within weeks of when they 16 claimed it.</p> <p>17 Q Do you know how it was resolved?</p> <p>18 A The attorneys resolved it. I don't know, 19 here sitting today. We'd have to go get the record. 20 Whatever it is, it is.</p> <p>21 Are you suggesting that Emerald had 22 equipment in Santo Domingo, and then turned around 23 and invoiced you for lost equipment? Are you going 24 to say that? Is that what you're saying?</p>	<p>1 A My recollection is I was told that by 2 Arthur or Lorraine. Whether it was or wasn't, I 3 don't know. The record will speak for itself.</p> <p>4 MR. MOLDOFF: Let's take a break, 5 two-minute break.</p> <p>6 MR. ARMSTRONG: That's fine, because I'm 7 almost finished.</p> <p>8 MR. MOLDOFF: Okay. 9 (Brief recess.)</p> <p>10 BY MR. ARMSTRONG:</p> <p>11 Q Mr. Holt, have you ever participated in 12 the preparation of the spreadsheet invoices sent to 13 Sea Star?</p> <p>14 A Physically participate, no.</p> <p>15 Q Have you participated in any way?</p> <p>16 A The overview and review.</p> <p>17 Q Did you review those invoices?</p> <p>18 A I did.</p> <p>19 Q If Sea Star responded, did you review 20 responses?</p> <p>21 A I probably did.</p> <p>22 MR. MOLDOFF: Objection to the form of 23 the question.</p> <p>24 BY MR. ARMSTRONG:</p>

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29 (Pages 110 to 113)

		Page 110	Page 112
1	Q Have you reviewed the backup documents		
2	for the spreadsheet invoices?		
3	A Physically, no. No. I just took the		
4	position of Arthur and Lorraine that, after review of		
5	all this, it shows that Sea Star used the equipment		
6	more than what they were paying for.		
7	Q Have you reviewed any of the backup		
8	documents submitted with any Sea Star responses?		
9	MR. MOLDOFF: Object to form. What		
10	responses are you referring to?		
11	MR. ARMSTRONG: Responses to the		
12	spreadsheet invoices.		
13	THE WITNESS: I have reviewed some of		
14	their answers, yes.		
15	MR. MOLDOFF: During the -- are you		
16	referring to the response -- just so that we're		
17	clear, are you referring to the responses to the		
18	arbitration that you said would not be admissible in		
19	evidence?		
20	MR. ARMSTRONG: No.		
21	MR. MOLDOFF: What responses are you		
22	referring to?		
23	MR. ARMSTRONG: I'm referring to		
24	responses outside of that, which, as you know, have		
		Page 111	Page 113
1	gone on for several years.		
2	MR. MOLDOFF: Well, I don't know that.		
3	But --		
4	BY MR. ARMSTRONG:		
5	Q Let me show you -- let's see -- copies of		
6	spreadsheet invoices for 20-foot chassis and 40-foot		
7	chassis. And I'll tell you that I'm just showing you		
8	the first and last page of each of these invoices.		
9	They show as having been amended in August 2007.		
10	Q Have you seen those documents before?		
11	A No, I haven't seen this document.		
12	Was the amendment a plus or minus for Sea		
13	Star?		
14	Q Usually the amendments are minuses for		
15	Sea Star.		
16	A You're saying in '07 --		
17	Q I'm just asking, have you seen those		
18	documents?		
19	A Not these documents specifically.		
20	MR. MOLDOFF: If you recall.		
21	THE WITNESS: I don't recall. But the		
22	reason you said '07 is -- I don't believe I saw them.		
23	BY MR. ARMSTRONG:		
24	Q Okay.		

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30 (Pages 114 to 117)

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1 invoices.	<p>2 A I didn't read each line, but okay.</p> <p>3 Q Well, you look at the top line --</p> <p>4 A Top line of the amended invoice?</p> <p>5 Q Right.</p> <p>6 A Amended 5/1/06. Okay.</p> <p>7 Q And look at the other amended invoice.</p> <p>8 A Same thing.</p> <p>9 Q Amended 5/1/06.</p> <p>10 A And then there's one here amended</p> <p>11 12/1/05.</p> <p>12 Q Now, which set of invoices -- those that</p> <p>13 I've shown you that are Exhibit 10 or those that you</p> <p>14 have in your hand that are Exhibit 11 -- applies to</p> <p>15 the Amended Counterclaim?</p> <p>16 A My presumption is they all do. These</p> <p>17 amendments, as dated, are solely based on facts that</p> <p>18 were garnished through discovery from you or other</p> <p>19 information that come in for them.</p> <p>20 We have stuff that goes -- here's one for</p> <p>21 March 14th, '03. Here's one for October '02. This</p> <p>22 is the information we're getting from your records.</p> <p>23 Q Sir, Ms. Robins sends an email</p> <p>24 October 26th, 2007.</p>	<p>1 looking at it here and saying, Why was it amended?</p> <p>2 And then I look at the explanation: "Not</p> <p>3 on self-billing report," is the predominant reason</p> <p>4 why they were amended. For all I know she never got</p> <p>5 around to doing a stack of self-billing reports.</p> <p>6 Q All right, sir.</p> <p>7 A I have no clue. But the fact is that it</p> <p>8 shows that you owed money.</p> <p>9 Q Showing you Exhibit 10, which says,</p> <p>10 amended 8/28/07, on both sets --</p> <p>11 A Okay.</p> <p>12 Q -- and Exhibit 11 --</p> <p>13 A Okay.</p> <p>14 Q -- which are the more current amended</p> <p>15 invoices?</p> <p>16 MR. MOLDOFF: If you know.</p> <p>17 THE WITNESS: Well, I don't know. But</p> <p>18 you can read them and figure out which they are.</p> <p>19 They're separate. They're not one and</p> <p>20 the same, if that's your question. There's separate</p> <p>21 numbers, separate equipment numbers, separate dates.</p> <p>22 They're separate.</p> <p>23 This is not -- are you saying this is a</p> <p>24 duplication? I don't think so, sir.</p>
1 A Right.	<p>2 Q She attaches invoices; and I'm showing</p> <p>3 you two of the categories, first and last page, as I</p> <p>4 told you.</p> <p>5 A Yes, sir.</p> <p>6 Q We see that those invoices indicate, at</p> <p>7 the top, that they were amended May 1st, 2006;</p> <p>8 correct?</p> <p>9 MR. MOLDOFF: I object to the form of the</p> <p>10 question. That's what the document says. It doesn't</p> <p>11 say that that's when the amendments were actually</p> <p>12 made.</p> <p>13 BY MR. ARMSTRONG:</p> <p>14 Q Well, Counsel has raised a good point.</p> <p>15 Can you tell when the amendments were</p> <p>16 actually made?</p> <p>17 A No.</p> <p>18 MR. MOLDOFF: If you know.</p> <p>19 BY MR. ARMSTRONG:</p> <p>20 Q Do you know whether there are amendments</p> <p>21 on those invoices that were made after May 1st,</p> <p>22 2006?</p> <p>23 A I can't tell you that. The document</p> <p>24 speaks for itself. I'm looking at it here -- I'm</p>	<p>1 BY MR. ARMSTRONG:</p> <p>2 Q Is your answer that you don't know which</p> <p>3 of these is the current invoice for the 20-foot</p> <p>4 chassis and the 40-foot chassis?</p> <p>5 A My answer is, that is purported to be an</p> <p>6 amended invoice, pure, plain and simple, for whatever</p> <p>7 it may be -- both of them.</p> <p>8 MR. MOLDOFF: And Counsel, if there are</p> <p>9 any questions regarding what the invoice is, which</p> <p>10 you should be responding to in discovery, all you</p> <p>11 have to do is pick up the phone and ask me, if</p> <p>12 there's any question about that.</p> <p>13 MR. ARMSTRONG: Yes, Counsel; I certainly</p> <p>14 shall do that.</p> <p>15 BY MR. ARMSTRONG:</p> <p>16 Q Do you know whether this 8/28/07 invoice</p> <p>17 has been amended after 8/28/07?</p> <p>18 A I don't know.</p> <p>19 You asked me is it part of the</p> <p>20 Counterclaim. I don't know. I assume it is. You</p> <p>21 would know better than me.</p> <p>22 I sure hope it's part of our claim. I</p> <p>23 wouldn't want to leave several hundred thousand</p> <p>24 dollars on the table.</p>

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7 MR. ARMSTRONG: I have nothing further.
8 Thank you.

9 (Deposition concluded 1:00 p.m.)
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13 CERTIFICATION
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13 I hereby certify that I have read the
14 foregoing transcript of my deposition testimony, and
15 that my answers to the questions propounded, with the
16 attached corrections or changes, if any, are true and
17 correct.
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13 THOMAS HOLT, SR.
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1 CERTIFICATE OF SHORTHAND REPORTER
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3 I, Gail Inghram Verbano, CSR, RMR, CLR,
4 the officer before whom the foregoing proceedings
5 were taken, do hereby certify that the foregoing
6 transcript is a true and correct record of the
7 proceedings; that said proceedings were taken by me
8 stenographically and thereafter reduced to
9 typewriting under my supervision; and that I am
10 neither counsel for, related to, nor employed by any
11 of the parties to this case and have no interest,
12 financial or otherwise, in its outcome.

15
16 *Gail Inghram Verbano*
17 Gail Inghram Verbano, CSR, RMR, CLR
18 CSR No. 8635
Certification No.: 220
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